(25,352)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 522.

SERNETTA J. McCOY AND JOHN R. CAVERLY, AS EXECUTORS OF THE ESTATE OF WILLIAM A. McCOY, DECEASED, PLAINTIFFS IN ERROR,

vs.

THE UNION ELEVATED RAILROAD COMPANY, THE LAKE STREET ELEVATED RAILROAD COMPANY, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 1, 1916.

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1 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court, Begun and Held at Springfield, on Tuesday the Fifth Day of October, in the year of our Lord one thousand nine hundred and fifteen, within and for the State of Illinois.

Present:

William M. Farmer, Chief Justice.
Justice James H. Cartwright.
Justice Frank K. Dunn.
Justice Charles C. Craig.
Justice Orrin N. Carter.
Justice George A. Cooke.
Justice Warren W. Duncan.
Patrick J. Lucey, Attorney General.
Warren C. Murray, Marshal.

Attest:
CHARLES W. VAIL, *Clerk.*

Be it remembered, that to-wit, on the Fifteenth day of September, A. D. 1915, the same being one of the days *of the days* in vacation before the term of Court last aforesaid, a record of the proceedings in the Superior Court of Cook County was filed by plaintiffs in error Sernetta J. McCoy et al. in the office of the Clerk of the Supreme Court in words and figures following, to-wit:

2 *Record from Superior Court of Cook County to Supreme Court.*

Gen. No. 225,555.

WILLIAM A. McCOY
vs.
THE UNION ELEVATED RAILROAD COMPANY, THE SOUTH SIDE Elevated Railroad Company, The Lake Shore Elevated Railroad Company, The Metropolitan West Side Elevated Railroad Company, The Northwestern Elevated Railroad Company.

Filed Sept. 15, 1915. Chas. W. Vail, Clerk Supreme Court.

3 *Placita.*

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook, ss:

Superior Court of Cook County.

Pleas Before the Honorable Hugo Pam, one of the Judges of the Superior Court of Cook County, in the State of Illinois, holding a branch court of said court, at a regular term of said Superior Court of Cook County, begun and holden at the Court House, in the city of Chicago, in said county and State, on the first Monday, being the second day of March, in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States of America the one hundred and thirty-eight.

Present:

The Honorable Hugo Pam, Judge of the Superior Court of Cook County.
Maclay Hoyne, State's Attorney.
Michael Zimmer, Sheriff of Cook County.

Attest:
RICHARD J. McGRATH, *Clerk.*

Be it remembered that heretofore, towit: on the 29th day of September A. D. 1902 a certain Præcipe was filed in the office of the Clerk of said Court, in words and figures following to-wit:

4 *Præcipe.*

Superior Court.

STATE OF ILLINOIS,
County of Cook, ss:

Superior Court of Cook County, November Term, A. D. 1902.

WILLIAM A. McCOY, Plaintiff,
vs.
THE UNION ELEVATED RAILROAD COMPANY, THE SOUTH SIDE Elevated Railroad Company, The Lake Street Elevated Railroad Company, The Metropolitan West Side Elevated Railway Company, The Northwestern Elevated Railroad Company, Defendants.

Damages, $150,000.00.

The Clerk of said Court will issue a Summons in the above entitled cause to said Defendant in a plea of Trespass in the case to the

damage of said Plaintiff in the sum of One Hundred fifty thousand Dollars, direct the same to the sheriff of Cook County to execute and make it returnable to the November Term of said Court, A. D. 1902.

OLIVER & MECARTNEY,
Plaintiff's Attorney-.

Chicago, Sept. 29th, 1902.

To John A. Linn, Esq., Clerk.

[Endorsed:] 225555. Superior Court of Cook County. McCoy vs. Un. *L.* R. R. Co. et al. Præcipe. Filed Sept. 29, 1902. John A. Linn. Oliver & Mecartney, Plaintiff's Attorneys.

5 Thereupon on the same day to-wit on the 29th day of September A. D. 1902 a certain People's Writ of Summons issued out of the Office of the Clerk of Said Court under the Seal thereof directed to the Sheriff of Cook County to execute which writ together with the return of the Sheriff thereon endorsed are in words and figures following to-wit

Summons.

Superior Court.

STATE OF ILLINOIS,
County of Cook, ss:

The People of the State of Illinois to the Sheriff of said County, Greeting:

We command that you summon The Union Elevated Railroad Company, The South Side Elevated Railroad Company, The Lake Street Elevated Railroad Company, The Metropolitan West Side Elevated Railway Company, and The Northwestern Elevated Railroad Company if they shall be found in your County, personally to be and appear before the Superior Court of Cook County, on the first day of the term thereof, to be holden at the Court House, in the City of Chicago, in said Cook County on the first Monday of November next to answer unto William A. McCoy In a plea of Trespass on the case to the damage of said plaintiff, as it is said, in the sum of One hundred fifty thousand Dollars.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness, John A. Linn, Clerk of our said Court, and the Seal thereof, at Chicago, aforesaid, this 29th day of September A. D. 1902.

[SEAL.] JOHN A. LINN, *Clerk.*

Pd. 5.00.

"Served this writ on the within named The Metropolitan West Side Elevated Railway Company, a corporation by delivering a copy

thereof to George Higginson, Jr., Secretary of said corporation this 1st day of October, 1902.

"The president of said corporation not found in my county, also

"Served this writ on the within named The Union Elevated Railroad Company, a corporation by delivering a copy thereof to W. V. Griffin, Secretary of said corporation this 1st day of October, 1902.

"The president of said corporation not found in my county, also

"Served this writ on the within named The Lake Street Elevated Railroad Company, a corporation by delivering a copy thereof to W. V. Griffin, Secretary of said corporation this 1st day of October, 1902.

"The president of said corporation not found in my county, also

"Served this writ on the within named The Northwestern Elevated Railroad Company, a corporation by delivering a copy thereof to W. V. Griffin, Secretary, of said corporation this 1st day of October, 1902.

"The president of said corporation not found in my county.

ERNEST J. MAGERSTADT, *Sheriff*,
By JAMES SHERIDAN, *Deputy*.

"Served this writ on the within named The South Side Elevated Railroad Company, a corporation by delivering a copy thereof to J. H. Glade, Secretary of said corporation this 6th day of October, 1902.

"The president of said corporation not found in my county.

ERNEST J. MAGERSTADT, *Sheriff*,
By CHARLES L. SHEELICH, *Deputy*.

6 And afterwards to-wit on the 3rd day of October A. D. 1902 a certain Declaration was filed in the office of the Clerk of said Court, in words and figures following to-wit:

7 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 225,555. Term No. —.

WILLIAM A. McCOY
vs.
THE UNION ELEVATED RAILROAD COMPANY, THE LAKE STREET Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Company.

William A. McCoy, plaintiff in this suit, by Harry S. Mecartney, his attorney, complains of the defendants The Union Elevated Rail-

road Company, The Lake Street Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railway Company, all corporations organized and existing under and by virtue of the laws of Illinois of a plea of trespass on the case.

For that Whereas the said William A. McCoy was at the time of the committing of the grievances hereinafter mentioned, the owner of the following described real estate, with the buildings thereon and the appurtenances thereto belonging, situated in the City of Chicago, County of Cook and State of Illinois, to wit:

Lots twenty-one (21) and twenty-two (22) and the east twenty-five (25) feet of Lots twenty (20) and twenty-three (23) in Block one hundred fifteen (115) of School Section Addition to Chicago, commonly known as McCoy's Hotel, located at the northwest corner of Clark and Van Buren streets, in said Chicago; which said premises were at the time aforesaid, and from thence hitherto have been and now are improved by a seven story and basement brick and stone building occupied by the plaintiff and divers tenants of the plaintiff and particularly adapted, fitted up and used for business and hotel purposes, and having special value for said uses and purposes; and along, by, and in front of said premises, at the time aforesaid, and long prior thereto, there ran a public street or highway commonly known as Van Buren street, which said street was on a level grade, open to the sky and unobstructed, and used only for purposes of public travel and traffic along the surface thereof; by means whereof the said premises and said plaintiff and his said tenants had and enjoyed all those certain street rights, easements and privileges which legally appertain and rightfully belong to property abutting
8 public streets in said City of Chicago, entirely free from the obstructions, annoyances and disturbances hereinafter complained of; including the rights and easements of light, air, access, privacy, view, etc.: including the free, convenient, uninterrupted and unobstructed means of ingress and egress to and from said premises by means of said street by wagons and other vehicles, as well as on foot: including the full, free, uninterrupted and unobstructed access to abundant light and air from said street in, to and upon said premises: including the full and free use and enjoyment of said premises in connection with said street in privacy and quiet, subject only to the ordinary and usual travel and traffic along the surface thereof, as aforesaid, but entirely free from the noises, rumblings, shakings, disturbances, vibrations, dirt, sparks, cinders, gases, etc., hereinafter complained of; which said rights and easements, free and unobstructed as aforesaid, were of great benefit and advantage to the plaintiff and an element of great and special value to said premises; and which said rights and easements the said plaintiffs was entitled to have and enjoy forever unobstructed and unimpaired as aforesaid:

Yet the defendants, well knowing the premises, but contriving and wrongfully intending to injure the plaintiff in his use and enjoyment of said premises and the appurtenances thereunto belonging in connection with said street as aforesaid, and to destroy and greatly decrease the value of said property and plaintiff's said

rights and easements therein, did, on to wit, October 1, 1897, and at divers other times subsequent thereto and prior to the commencement of this suit, enter upon said Van Buren street, in the
9 City of Chicago, and excavated and tore up the same in front of said premises and built and constructed in and along said highway in front of said premises an elevated railroad structure, permanent in character, and consisting of stone, iron, steel, wood and other materials, in which iron and steel rails were laid upon wooden ties placed crosswise about six inches apart upon large and heavy horizontal iron girders, elevated at, to wit, twenty (20) feet above the surface of said street, and supported by numerous heavy upright iron posts and columns resting on stone and cement foundations sunk in said street to a great depth; and all so connected and braced as to form the road-bed of an elevated railroad on which ran two or more tracks; and also then and there built and constructed in connection therewith in said street in front of said premises an elevated railway station house, containing rooms for ticket sellers and other employes, news-stands, waiting rooms and other accommodations usual to an elevated railway station, and in connection therewith said defendants then and there also constructed and built long covered platforms and covered iron stairways leading from said station to said street in front of said premises; which said structure was of great height, width and thickness and covered nearly all of said highway in front of said premises and extended for a great distance along said Van Buren street to the east and to the west and connected with certain other elevated railway structures, in and along divers other streets in said city and thence running to the outlying parts thereof, so that said portion of said structure in front of said premises formed a part of a continuous
10 elevated railway structure; and upon the completion of said elevated railway structure, as aforesaid, the said defendants then and there proceeded to and did operate, and from thence hitherto have continued to operate, over and upon and along said elevated railway structure in front of said premises a large number of engines, cars and trains of cars, and by the construction and operation of said elevated railroad as aforesaid, the said defendants permitted and caused to be thrown from said cars and trains and said structure, in, to and upon said premises and said street in front of said premises, large quantities of soot, smoke, steam, cinders, sparks, ashes, coal, dirt, water, snow, ice, grease, oil and filth; and caused the air in and about said premises to be impregnated with disagreeable and harmful odors, steam, vapors and gases; and caused great noises, rumblings, creakings, uproar and confusion; and disturbed and prevented the rest and sleep of the plaintiff, and the lodgers, tenants and occupants of said premises in the night time and day time as well; and disturbed and destroyed the privacy of rooms, offices, apartments and stores in said building and caused said building and the earth adjacent thereto to shake, jar, tremble and vibrate; and by means of the construction and operation of said elevated railroad as aforesaid, the said defendants cut off, impaired and greatly interfered with the said free, convenient, uninterrupted and

unobstructed ingress and egress to said premises, darkened said street in front of said premises and adjacent thereto and cut off, impaired and greatly interfered with the access of light and air to said premises theretofore had and enjoyed by said owner and occupants
11 thereof; all of which said disturbances and injuries and grievances above complained of, have continued from and since, to wit, said October 1, 1897, hitherto, and have caused and are now causing and will henceforth continue to cause a great and permanent damage and injury to said premises and building and said rights and easements therein, and by means thereof the said real estate has been greatly reduced in market value, to wit, in the sum of one hundred fifty thousand dollars ($150,000).

And the plaintiff avers that said defendants became and are bound to make full compensation to plaintiff for the said loss and damage under the Constitution and Laws of the State of Illinois; but the said defendants, though often requested, have not, nor has any or either of them, paid said loss and damage or any part thereof, but hitherto have wholly neglected and refused and still neglect and refuse so to do, to the damage of said plaintiff of one hundred fifty thousand dollars ($150,000); wherefore he brings this suit.

HARRY S. MECARTNEY,
Attorney for Plaintiff.

12 And afterwards to-wit, on the 28th day of December A. D. 1905 a certain Plea was filed in the office of the Clerk of said Court, in words and figures following to-wit:

13 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Case 225,555 — 1780.

WILLIAM A. McCOY
vs.
UNION ELEVATED RAILROAD COMPANY et al.

Now come the Union Elevated Railroad Company, The Metropolitan West Side Elevated Railway Company, the Northwestern Elevated Railroad Company, the South Side Elevated Railroad Company and The Lake Street Elevated Railroad Company, by Clarence A. Knight, their attorney, and defend the wrong and injury, when, etc., and say that they are not guilty of the supposed grievances above laid to their charge, or any or either of them, in manner and form as the plaintiff has above thereof complained against them: And of this the said defendants put themselves upon the country, etc.

And for a further plea in this behalf the defendants say that the plaintiff ought not to have his aforesaid action against them, the defendants, because they say that at the time of the committing

of the grievances complained of in said declaration the plaintiff was not the owner of the real estate and premises in said declaration described, or of any interest in said premises in manner and form as the plaintiff has above thereof complained against them, the defendants; And of this the said defendants put themselves upon the Country, etc.

14 And for a further plea in this behalf the defendants say that the plaintiff ought not to have his aforesaid action against them, the defendants, because they say that they did not, on the first day of April A. D. 1896, or at any other time before or since said day, enter upon Van Buren Street in the City of Chicago, and excavate and tear up the same in front of the premises in said declaration described, and build and construct in and along said highway in front of said premises the elevated railroad structure and station house in said declaration described, and did not upon the completion of said elevated railroad structure and station house operate and have not since operated over, upon and along said elevated railway structure, in front of said premises, any railroad cars, engines and trains, in manner and form as the plaintiff has above thereof complained against them: And of this the defendants put themselves upon the country, etc.

CLARENCE A. KNIGHT,
Attorney for said Defendants.

15 No. 225,555. Case.

WILLIAM A. McCOY
vs.
THE UNION ELEVATED RAILWAY COMPANY et al.

OCT. 9, 1908.

On motion of Plaintiff's attorney, it is ordered that leave be and is hereby given the plaintiff to file an amended declaration herein instanter and the defendants required to plead answer or demur thereto within ten days from this date.

16 And on to-wit the 9th day of October A. D. 1908 a certain Amended Declaration was filed in the office of the clerk of said Court in words and figures following to-wit:

17 STATE OF ILLINOIS,
County of Cook. ss:

In the Superior Court of Cook County.

Gen. No. 225,555. Term No. —.

WILLIAM A. McCOY
vs.
THE UNION ELEVATED RAILROAD COMPANY, THE LAKE STREET Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railway Company.

Leave of court being first had and obtained to file an amended declaration herein, now comes the plaintiff, William A. McCoy by Harry S. Mecartney, his attorney and complains of the defendants, the Union Elevated Railroad Company, The Lake Street Elevated Railroad Company, The Southside Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railway Company, all corporations organized and existing under and by virtue of the laws of Illinois, of a plea of trespass on the case.

18 For That Whereas the said William A. McCoy was at the time of the committing of the grievances hereinafter mentioned, the owner of the following described real estate, with the buildings thereon and the appurtenances thereto belonging, situated in the City of Chicago, County of Cook and State of Illinois, to wit:

Lots twenty-one (21) and twenty-two (22) and the east twenty-five (25) feet of Lots twenty (20) and twenty-three (23) in Block one hundred fifteen (115) of School Section Addition to Chicago, commonly known as McCoy's Hotel, located at the northwest corner of Clark and Van Buren streets, in said Chicago; which said premises were at the time aforesaid, and from thence hitherto have been and now are improved by a seven story and basement brick and stone building occupied by the plaintiff and divers tenants of the plaintiff and particularly adapted, fitted up and used for business and hotel purposes, and having special value for said uses and purposes; and along, by, and in front of said premises, at the time aforesaid, and long prior thereto, there ran a public street or highway commonly known as Van Buren street, which said street was on a level grade, open to the sky and unobstructed, and used only for purposes of public travel and traffic along the surface thereof; by means whereof the said premises and said plaintiff and his said tenants had and enjoyed all those certain street rights, easements and privileges which legally appertain and rightfully be-

19 long to property abutting public streets in said City of Chicago, entirely free from the obstructions, annoyances and disturbances hereinafter complained of; including the rights and

easements of light, air, access, privacy, view, etc.: including the free, convenient, uninterrupted and unobstructed means of ingress and egress to and from said premises by means of said street by wagons and other vehicles, as well as on foot; including the full, free, uninterrupted and unobstructed access to abundant light and air from said street in, to and upon said premises: including the full and free use and enjoyment of said premises in connection with said street in privacy and quiet, subject only to the ordinary and usual travel and traffic along the surface thereof, as aforesaid, but entirely free from the noises, rumblings, shakings, disturbances, vibrations, dirt, sparks, cinders, gases, etc., hereinafter complained of; which said rights and easements, free and unobstructed as aforesaid, were of great benefit and advantage to the plaintiff and an element of great and special value to said premises; and which said rights and easements the said plaintiffs was entitled to have and enjoy forever unobstructed and unimpaired as aforesaid:

Yet the defendants, well knowing the premises, but contriving and wrongfully intending to injure the plaintiff in his use and enjoyment of said premises and the appurtenances thereunto belonging in connection with said street as aforesaid, and to destroy and greatly decrease the value of said property and plaintiff's said rights and easements therein, did, on to wit, October 1, 1897, and at divers other times subsequent thereto and prior to the commencement of this suit, enter upon said Van Buren street, in the City of Chicago, and excavated and tore up the same in front of said premises and built and constructed in and along said highway in front of said premises an elevated railroad structure, permanent in character, and consisting of stone, iron, steel, wood and other materials, in which iron and steel rails were laid upon wooden ties placed crosswise about six inches apart upon large and heavy horizontal iron girders, elevated at, to wit, twenty (20) feet above the surface of said street, and supported by numerous heavy upright iron posts and columns resting on stone and cement foundations sunk in said street to a great depth; and all so connected and braced as to form the road-bed of an elevated railroad on which ran two or more tracks; and also then and there built and constructed in connection therewith in said street in front of said premises an elevated railway station house, containing rooms for ticket sellers and other employes, news-stands, waiting rooms and other accommodations usual to an elevated railway station, and in connection therewith said defendants then and there also constructed and built long covered platforms and covered iron stairways leading from said station to said street in front of said premises; which said structure was of great height, width and thickness and covered nearly all of said highway in front of said premises and extended for a great distance along said Van Buren street to the east and to the west and connected with certain other elevated railway structures, in and along divers other streets in said city and thence running to the outlying parts thereof, so that said por-

tion of said structure in front of said premises formed a part
21 of a continuous elevated railway structure; and upon the completion of said elevated railway structure, as aforesaid, the said defendants then and there proceeded to and did operate, and from thence hitherto have continued to operate, over and upon and along said elevated railway structure in front of said premises a large number of engines, cars and trains of cars, and by the construction and operation of said elevated railroad as aforesaid, the said defendants permitted and caused to be thrown from said cars and trains and said structure, in, to and upon said premises and said street in front of said premises, large quantities of soot, smoke, steam, cinders, sparks, ashes, coal, dirt, water, snow, ice, grease, oil and filth; and caused the air in and about said premises to be impregnated with disagreeable and harmful odors, steam, vapors and gases; and caused great noises, rumblings, creakings, uproar and confusion; and disturbed and prevented the rest and sleep of the plaintiff, and the lodgers, tenants and occupants of said premises in the night time and day time as well; and disturbed and destroyed the privacy of rooms, offices, apartments and stores in said building and caused said building and the earth adjacent thereto to shake, jar, tremble and vibrate; and by means of the construction and operation of said elevated railroad as aforesaid, the said defendants cut off, impaired and greatly interfered with the said free, convenient, uninterrupted and unobstructed ingress and egress to said premises, darkened said street in front of said premises and adjacent thereto and cut off, impaired and greatly interfered with the access of light and air to said premises theretofore had and enjoyed by said owner and occupants thereof; all of which
22 said disturbances and injuries and grievances above complained of, have continued from and since, to wit, said October 1, 1897, hitherto, and have caused and are now causing and will henceforth continue to cause a great and permanent damage and injury to said premises and building and said rights and easements therein, and by means thereof the said real estate has been greatly reduced in market value, to wit, in the sum of one hundred fifty thousand dollars ($150,000).

And the plaintiff avers that said defendants became and are bound to make full compensation to plaintiff for the said loss and damage under the Constitution and Laws of the State of Illinois; but the said defendants, though often requested, have not, nor has any or either of them, paid said loss and damage or any part thereof, but hitherto have wholly neglected and refused and still neglect and refuse so to do, to the damage of said plaintiff of one hundred fifty thousand dollars ($150,000); wherefore he brings this suit.

And for that whereas, the said William A. McCoy was, at the time of the committing of the grievances hereinafter mentioned, the owner, as lessee under lease for the term of 99 years from to wit: January 1, 1883, to to wit: December 31, 1981, of Lots twenty-one (21) and twenty-two (22) in Block one hundred fifteen (115) of School Section Addition to Chicago, and the owner in fee simple of the east twenty-five (25) feet of Lots Twenty (20) and

Twenty-three (23) in said Block one hundred fifteen (115) of School Section Addition to Chicago, with the buildings on the aforesaid Lots 21 and 22 and the east 25 feet of Lots 20 and 23 and the appurtenances thereto belonging, situated in the City of Chicago, County of Cook and State of Illinois, commonly known as McCoy's Hotel, located at the northwest corner of Clark and Van Buren streets in said Chicago; which said premises were at the time aforesaid, and from thence hitherto have been and now are improved by a seven story and basement brick and stone building,

occupied by the plaintiff and divers tenants of the plaintiff
23 and particularly adapted, fitted up and used for business and hotel purposes, and having special value for said uses and purposes; and along, by and in front of said premises, at the time aforesaid, and long prior thereto, there ran a public street or highway commonly known as Van Buren street, which said street was on a level grade, open to the sky and unobstructed, and used only for purposes of public travel and traffic along the surface thereof, by means whereof the said premises and said plaintiff and his said tenants had and enjoyed all those certain street rights, easements and privileges which legally appertain and rightfully belong to property abutting public streets in said City of Chicago, entirely free from the obstructions, annoyances and disturbances hereinafter complained of: including the rights and easements of light, air, access, privacy, view, etc.: including the free, convenient, uninterrupted and unobstructed means of ingress and egress to and from said premises by means of said street by wagons and other vehicles, as well as on foot; including the full, free, uninterrupted and unobstructed access to abundant light and air from said street in, to and upon said premises: including the full and free use and enjoyment of said premises in connection with said street in privacy and quiet, subject only to the ordinary and usual travel and traffic along the surface thereof, as aforesaid, but entirely free from the noises, rumblings, shakings, disturbances, vibrations, dirt, sparks, cinders, gases, etc., hereinafter complained of; which said rights and easements, free and unobstructed as aforesaid, were

of great benefit and advantage to the plaintiff and an ele-
24 ment of great and special value to said premises; and which said rights and easements the said plaintiff was entitled to have and enjoy forever unobstructed and unimpaired as aforesaid.

Yet the defendants, well knowing the premises, but contriving and wrongfully intending to injure the plaintiff in his use and enjoyment of said premises and the appurtenances thereunto belonging in connection with said street as aforesaid, and to destroy and greatly decrease the value of said property and plaintiff's said rights and easements therein, did, on to wit: October 1, 1897, and at divers other times subsequent thereto and prior to the commencement of this suit, enter upon said Van Buren street, in the City of Chicago, and excavated and tore up the same in front of said premises and built and constructed in and along said highway in front of said premises *and* elevated railroad structure, permanent

in character, and consisting of stone, iron, steel, wood and other materials, in which iron and steel rails were laid upon wooden ties placed crosswise about six inches apart upon large and heavy horizontal iron girders, elevated at to wit: twenty (20) feet above the surface of said street, and supported by numerous heavy upright iron posts and columns resting on stone and cement foundations sunk in said street to a great depth; and all so connected and braced as to form the roadbed of an elevated railroad on which ran two or more tracks; and also then and there built and constructed in connection therewith in said street in front of said premises an elevated railway station house, containing rooms for ticket sellers and other employes, news-stands, waiting-rooms and other accommodations usual to an elevated railway station, and in connection therewith said defendants then and there also constructed and built long covered platforms and covered iron stairways leading from said station to said street in front of said premises; which said structure was of great height, width and thickness and covered nearly all of said highway in front of said premises and extended for a great distance along said Van Buren street to the east and to the west and connected with certain other elevated railway structures, in and along divers other streets in said city and thence running to the outlying portions thereof, so that said portion of said structure in front of said premises formed a part of a continuous elevated railway structure; and upon the completion of said elevated railway structure, as aforesaid, the said defendants then and there proceeded to and did operate, and from thence hitherto have continued to operate, over and upon and along said elevated railway structure in front of said premises a large number of engines, cars and trains of cars, and by the construction and operation of said elevated railroad as aforesaid, the said defendants permitted and caused to be thrown from said cars and trains and said structure, in, to and upon said premises and said street in front of said premises, large quantities of soot, smoke, steam, cinders, sparks, ashes, coal, dirt, water, snow, ice, grease, oil and filth; and caused the air in and about said premises to be impregnated with disagreeable and harmful odors, steam, vapors and gases; and caused great noises, rumblings, creakings, uproar and confusion; and disturbed and prevented the rest and sleep of the plaintiff, and the lodgers, tenants and occupants of said premises in the night time and day time as well; and disturbed and destroyed the privacy of rooms, offices, apartments and stores in said building and caused said building and the earth adjacent thereto to shake, jar, tremble and vibrate; and by means of the construction and operation of said elevated railroad as aforesaid, the said defendants cut off, impaired and greatly interfered with the said free, convenient, uninterrupted and obstructed ingress and egress to said premises, darkened said street in front of said premises and adjacent thereto and cut off, impaired and greatly interfered with the access of light and air to said premises theretofore had and enjoyed by said owner and occupants thereof; all of which said disturbances and injuries and grievances above complained of, have continued from and since,

to wit, said October 1, 1897, hitherto, and have caused and are now causing and will henceforth continue to cause a great and permanent damage and injury to said premises and building and said rights and easements therein, and by means thereof the said real estate has been greatly reduced in market value to wit, in the sum of one hundred fifty thousand dollars ($150,000).

And the plaintiff avers that said defendants became and are bound to make full compensation to plaintiff for the said loss and damage under the Constitution and Laws of the State of Illinois, but the said defendants, though often requested, have not, nor has any or either of them, paid said loss and damage or any part thereof, but hitherto have wholly neglected and refused and still neglect and refuse so to do, — the damage of said plaintiff of one hundred fifty thousand dollars ($150,000); wherefore he brings this suit.

HARRY S. MECARTNEY,
Attorney for Plaintiff.

27 And Afterwards to-wit, on the 19th day of October A. D. 1908, a certain Demurrer was filed in the office of the Clerk of said Court, in words and figures following to-wit:

28 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Case. 225,555—1780.

WILLIAM A. McCOY
vs.
UNION ELEVATED RAILROAD COMPANY et al.

Now come the defendants Union Elevated Railroad Company, The Lake Street Elevated Railroad Company, South Side Elevated Railroad Company, Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railway Company, by Clarence A. Knight, their attorney, and defend, etc., when, etc., and say that the said amended declaration and each and every count thereof, and the matters therein contained, in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain his aforesaid action, and that they, the defendants, are not bound to answer the same; and this the defendants are ready to verify.

And for special causes of demurrer to each count of said declaration, these defendants show to the Court the following:

1. Each of said counts is duplicitous in that there is joined therein separate and distinct causes of action, that is to say, there is set forth a cause of action for damages to said property caused by the casting of soot, smoke, cinders, sparks, etc., upon the property, the impregnation of the air with harmful odors, steam and gases, the

making of great noises, and the vibration of the building, all
29 of which arise only from the operation of trains over said elevated railroad structure, and there is joined with said cause of action another and distinct cause of action for damages to said property caused by the interference with the ingress and egress to and from said property, and the interference with the access of light and air to said property, which it is alleged arise from the construction of the said elevated railroad structure.

2. Each of said counts is duplicitous for the further reason that there is joined therein a cause of action for damages to said property from the casting of soot, smoke, cinders, sparks, etc., thereon, and a cause of action for damages to said property from the impregnation of the air in and about the same with harmful odors, steam and gases, a cause of action for damages to said property from the making of great noises, rumblings, creakings, uproar and confusion about said property, a cause of action for damages to said property by causing the building located on said property and the earth adjacent thereto to shake, jar, tremble and vibrate, a cause of action for damages to said property from the impairment with the free and unobstructed ingress and egress to and from said premises, and a cause of action for damages to said property from the interference with the access of light and air to the same, each of which is a separate and distinct cause of action.

And for special cause of demurrer to the second count of said declaration this defendant shows to the Court that said count is duplicitous for the further reason that there is joined therein a cause of action for damages to property owned by the plaintiff in fee simple, described in said count as the East twenty-five (25) feet of Lots twenty (20) and twenty-three (23) in Block one hundred fifteen (115) in School Section Addition to Chicago, with a cause of action for damages to other property owned by the plain-
30 tiff as lessee for a term of years, described as Lots twenty-one (21) and twenty-two (22) in Block one hundred fifteen (115) of said School Section Addition to Chicago.

Wherefore for want of any sufficient count of said declaration in this behalf, these defendants pray judgment and that the plaintiff may be barred from maintaining his aforesaid action.

CLARENCE A. KNIGHT,
Attorney for Defendants.

STATE OF ILLINOIS,
County of Cook, ss:

W. V. Griffin, being duly sworn, deposes and says that he is the Secretary of the defendants' Union Elevated Railroad Company, The Lake Street Elevated Railroad Company and Northwestern Elevated Railroad Company, and the duly authorized agent in this behalf of all the defendants herein, and that the above and foregoing demurrer has not been interposed for delay.

W. V. GRIFFIN.

Subscribed and sworn to before me this 19th day of October, A. D. 1908.

[SEAL.] LE BARON L. AUSTIN,
Notary Public.

I, Clarence A. Knight, do hereby certify that I am the attorney for the defendants herein and in my opinion the foregoing demurrer is well founded in point of law.

CLARENCE A. KNIGHT.

31 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 225,555. Term No. 271.

WILLIAM A. McCOY
vs.
UNION ELEVATED RAILROAD COMPANY, LAKE STREET ELEVATED Railroad Company, Northwestern Elevated Railroad Company, Metropolitan West Side Elevated Railway Company, and South Side Elevated Railroad Company.

I hereby enter my appearance as attorney for the defendants in the above entitled cause.

ADDISON L. GARDNER,
Attorney for Defendants.

I hereby consent to the entry of appearance of Addison L. Gardner, as attorney for defendants in the above entitled cause, in place of Clarence A. Knight, deceased.

HARRY S. MECARTNEY,
Attorney for Plaintiff.

32 No. 225,555. Case.

WILLIAM A. McCOY
vs.
THE UNION ELEVATED RAILROAD COMPANY et al.

April 4, 1912.

Now, on this day, it is ordered that Addison L. Gardner be and is hereby substituted as attorney for the defendants herein in lieu of Clarence A. Knight, deceased.

33 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

WILLIAM A. McCOY
vs.
UNION ELEVATED RAILROAD CO. et al.

Order.

Now come the defendants and withdraw their demurrer to the amended declaration heretofore filed herein, and upon their motion It is Ordered by the Court that the pleas of the defendants to the original declaration herein stand also as pleas to the said amendment declaration and that defendants have leave to file further pleas to said amended declaration instanter.

HUGO PAM, *Judge.*

34 And on to-wit, on the 5th day of February, A. D. 1914, a certain Plea was filed in the office of the Clerk of said Court, in words and figures following to-wit:

35 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

WILLIAM A. McCOY
vs.
UNION ELEVATED RAILROAD CO. et al.

Now come the defendants, The Union Elevated Railroad Company, The Lake Street Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and the Metropolitan West Side Elevated Railroad Company, by Francis W. Walker, Randall W. Burns and Addison L. Gardner, their attorneys, and for a further plea to the second count of plaintiff's amended declaration in this behalf, the defendants say:

That the plaintiff ought not to have his aforesaid action against them, or either of them, because, they say, that the supposed cause of action in the second count of plaintiff's amended declaration filed herein on October 9, 1908, did not accrue to the plaintiff at any time within five years next before the filing of said second count in said amended declaration, which said second count states a new cause of action in manner and form as the plaintiff as above in said second count complained against them, the defendants: and this the defendants are ready to verify.

36 Wherefore, they pray judgment if the plaintiff ought to have his aforesaid action against them, etc.

FRANCIS W. WALKER,
RANDALL W. BURNS,
ADDISON L. GARDNER,
Attorneys for said Defendants.

37 No. 225,555. Case.

WILLIAM A. McCOY
vs.
THE UNION ELEVATED RAILWAY COMPANY et al.

Feb. 17, 1914.

This day again come the parties to this suit by their attorneys respectively and the jury impaneled herein also come and this cause coming on to be heard upon the plaintiff's demurrer to the defendants' plea of statute of limitations to the second count of the plaintiff's amended declaration filed herein, after arguments of counsel and due deliberation by the court, said demurrer is sustained to which the defendants except and the hour for adjournment having arrived, it is ordered that said jury be permitted to separate until tomorrow morning.

38 No. 225,555. Case.

WILLIAM A. McCOY
vs.
THE UNION ELEVATED RAILWAY COMPANY et al.

Feb. 18, 1914.

This day again come the parties to this suit by their attorneys respectively and the jury impaneled herein also come and on motion of plaintiff's attorney, it is ordered that leave be and is hereby given the plaintiff to file a demurrer to the defendants' plea of statute of limitations filed herein nunc pro tunc as of February fifth, A. D. 1914, and the hour for adjournment having arrived, it is ordered that said jury be permitted to separate until tomorrow morning.

39 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Case. Gen. No. 225,555. Term No. 84

WILLIAM A. McCOY
vs.
UNION ELEVATED RAILROAD COMPANY et al.

Now comes William A. McCoy, plaintiff in the above styled and numbered cause, by his attorney, Harry S. Mecartney, and defends etc., when etc., and says that the plea of the defendants of the Statute of Limitation to the second count of the amended declaration filed herein on the 5th day of February, 1914, and the matters therein contained, in manner and form as the same are therein set forth, are not sufficient in law for the defendants to maintain said plea, and that the plaintiff is not bound by law to answer the same, and this the plaintiff is ready to verify.

Wherefore, plaintiff prays judgment of the court.

HARRY S. MECARTNEY,
Attorney for Plaintiff.

40 No. 225,555. Case.

WILLIAM A. McCOY
vs.
THE UNION ELEVATED RAILWAY COMPANY et al.

Feb. 27, 1914.

This day again comes the parties to this suit by their attorneys respectively and the jury impaneled herein also come and after hearing all the evidence adduced, say: We, the Jury, find the defendants not guilty.

Whereupon the plaintiff enters herein his motion for a new trial in said cause.

41 We the Jury find the defendants not guilty.

ARTHUR M. LESLIE, *Foreman.*
CHAS. A. MOHNS.
HENRY HOMEIER.
JOHN A. BLYDE.
CHRISTIAN DOERR.
CHARLES E. SHAFFER.
HARRY G. FREDERICK.
FRED D. FINKE.
THOMAS S. CLARKE.
MATHIAS J. RAUEN.
WILLIAM H. McKINNEY.
JOSEPH SEDLO.

42 No. 225,555. Case.

WILLIAM A. McCOY
vs.
THE UNION ELEVATED RAILWAY COMPANY, THE SOUTH SIDE Elevated Railroad Company, The Lake Street Elevated Railroad Company, The Metropolitan West Side Elevated Railway Company, The Northwestern Elevated Railroad Company.

March 14, 1914.

On motion of Plaintiff's attorney, it is ordered that leave be and is hereby given the plaintiff to file his motion for a new trial in said cause, Nunc Pro tunc, as of February Twenty-seventh, A. D. 1914.

And this cause coming on to be heard upon the plaintiff's motion heretofore filed herein for a new trial in said cause, after argument of counsel, and due diliberation by the Court, said motion is overruled and a new trial denied to which the Plaintiff excepts.

Thereupon the plaintiff enters herein his motion in arrest of judgment which motion is also overruled to which the plaintiff excepts.

Therefore it is considered by the Court that the Plaintiff take nothing by his said suit and the defendants go hence without day and do have and recover of and from the plaintiff their costs and charges in this behalf expended and have execution therefor to which the plaintiff excepts.

Whereupon the Plaintiff having entered his exceptions herein prays an appeal from the judgment of this court to the Supreme Court of the State of Illinois which is allowed upon filing his appeal bond herein in the sum of Five Hundred Dollars to be approved by the Court within sixty days from this date and leave given the plaintiff to file his Bill of Exceptions herein within sixty days from this date.

43 No. 225,555. Case.

WILLIAM A. McCOY
vs.
UNION ELEVATED RAILROAD COMPANY et al.

May 7, 1914.

And now comes the plaintiff, by his counsel, and presents to the court his Bill of Exceptions in said cause with the request that the same be approved and signed and the same is marked by the Judge hereof, "presented in open court for approval and signing this 7th day of May, A. D. 1914."

44 No. 225,555. Case.

WILLIAM A. McCOY
vs.
THE UNION ELEVATED RAILWAY COMPANY et al.

May 12, 1914

This day comes the plaintiff to this suit by his attorney and presents to the Court his Bill of Exceptions in twenty-eight volumes for approval and said Bill of Exceptions is duly approved, signed and filed by the Court.

45 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 225,555.

WILLIAM A. McCOY
vs.
UNION ELEVATED RAILROAD COMPANY et al.

Trespass on the Case.

Stipulation.

It is hereby stipulated between the parties to the above and foregoing cause that the original bill of exceptions may be incorporated as a part of the record in the matter of an appeal from the judgment heretofore entered in this cause, or upon the hearing of any writ of error that may hereafter be sued out by the plaintiff in the Appellate Court of Illinois or in the Supreme Court of Illinois, questioning or seeking to reverse the said judgment of the Superior Court of Cook County.

HARRY S. MECARTNEY,
Attorney for Plaintiff.
A. L. GARDNER,
Attorney for Defendants.

Chicago, May 11, 1914.

48 WILLIAM McCOY:

Q. What is your name?
A. William McCoy.
Q. Where do you live?
A. I live at 5640 South Park Avenue, Chicago.
Q. How long have you lived in Chicago, Mr. McCoy?
A. Since September, 1867?
Q. Your business has been during that time, what, in particular?

A. Well, when I came to Chicago I was a journeyman carpenter. I afterwards left the business and entered the baking business.

Q. And then you went into the——

A. Into the hotel business.

Q. The restaurant business first?

A. No, the hotel and restaurant.

Q. Where was your restaurant in those days?

A. 142-144 Madison Street.

Q. That is right on the corner of the alley, between La Salle and Clark?

A. Yes, sir.

Q. How long were you there?

A. I was there from 1879 to 1884, five years.

Q. And then you went where?

A. During the time I was there I erected a hotel building which was afterwards called McCoy's, on the corner of Van Buren and Clark street.

Q. Van Buren and Clark street. In what year was that erected?

A. It was commenced in 1883 and finished and opened
47 the first day of June, 1884.

Q. Mr. McCoy you were then in the hotel business at Clark and Van Buren——

A. Yes, sir.

Q. —up to what time?

A. Up to the first day of January, 1910.

Q. Your first investment at the corner of Clark and Van Buren street was in what shape?

A. Marcus A. Devine and myself contracted with the Keeps, Henry and Albert Keep, in the fall of 1882, I think, to lease that corner, 95 by 108 feet.

Q. 95 on Clark street?

A. Yes, sir.

Q. By 108 feet on Van Buren?

A. Yes, sir.

Q. And did you later become the purchaser of Mr. Devine's interest?

A. Why, I think in March or April in 1883 I bought Mr. Devine's interest out.

Q. Did you and Mr. Keep take the property in equal divisions, Mr. Devine, I mean?

A. Mr. Devine you mean?

Q. Or Mr. Devine I should say.

A. Yes, sir.

Q. The leases will probably show. And you purchased him out in 1883—in 1883?

A. In 1883, yes, sir.

Q. Now I hand you a document purporting to be an indenture or lease from October 28, 1882, between Albert Keep, on the one part and William McCoy and Marcus A. Devine of the City of Chicago on the second part, and I will ask you if that is one of the

documents pertaining to that lease which you have men-
48 tioned?

A. Yes.

Q. Just state whether that is one of the documents, that is what I mean?

A. It is, yes, sir.

Q. It is?

A. Yes, sir.

Mr. Mecartney: Will you mark this, Mr. Reporter, Plaintiff's Exhibit 1 for identification?

The document referred to was thereupon marked as requested.

The Witness: This is the other one (indicating).

Mr. Burns: Did you offer this?

49 Mr. Mecartney: I am giving you a chance to look at it. Mark this Plaintiff's Exhibit 2 for identification, Mr. Reporter.

The document referred to was thereupon marked as requested.

Mr. Mecartney: Exhibit 1, Albert Keep to William McCoy is offered in evidence——

Mr. Walker: Wait; We want an objection. We object to Exhibit 1 and Exhibit 2 as being immaterial——

Mr. Mecartney: I have not offered both. If you want to object to both I will make the offers together.

50 Mr. Mecartney: I offer Plaintiff's Exhibit 2, a similar document of the same date, running from Henry Keep to the same parties, William McCoy and Marcus A. Devine.

Mr. Walker: One is Plaintiff's exhibit 1 and the other is Plaintiff's exhibit 2.

The Court: Plaintiff's exhibit 1 is also between the same parties as the Plaintiff's Exhibit 2?

Mr. Mecartney: Brothers own the property together and evidently each one leased for 99 years one-half, under the same terms, and on the same date——

Mr. Walker: You see the title was an undivided half in Henry Keep and Albert Keep. Instead of executing jointly one instrument they each executed a separate instrument to which their wives joined.

51 Q. When did you enter into the possession of those premises—leasehold premises?

A. It is my best recollection that the rent commenced to be paid in the first of January, 1883.

Q. Tell us when the building was constructed or when it was commenced and finished?

A. It was commenced as far as we—as soon as the frost was out of the ground in the next Spring, in 1883.

Q. And was in the course of building for how long up to
52 the time that you opened the hotel?

A. About a little over a year to build it and furnish it. It was opened the first day of June, 1884, ready for business.

Q. Now as the building was first constructed, describe it in general to us, how many stories was it?

A. It was a basement and seven floors above, what we call a seven story building.

Q. The first floor is fitted up or was fitted in what way?

A. There was one store on the north and then two large stores. A store next to that—in fact there was four stores fronting Clark and an entrance to the hotel, to the elevator of the hotel——

Q. That is from Clark street?

A. From Clark street, yes, sir.

Q. And then what was there fronting Van Buren street?

A. East of the entrance, the ladies' entrance on Van Buren was the drug store backing up to it, and then there were two stores besides that on the west of the entrance.

Q. The drug store then, did it face Van Buren in its narrowest dimensions, or did it face Clark street?

A. It faced Clark street.

Q. Then next to that there was a store between that and the ladies' entrance, is that right?

—. ——.

Q. I see. Then west of the ladies' entrance to the hotel
53 there were how many stores?

A. Two stores.

Q. And then next west of these two stores there were what?

A. A driveway eight feet wide into what we call the yard in those days.

Q. Then that yard was the space that was represented by the "L" so to speak, in the building, was it not? That is, the building did not cover all of the two lots, 21 and 22?

A. No, the building runs about 45 feet back from Van Buren street and then there was an open space left 18 by 50 feet.

Q. And then that is what you called the yard?

A. Yes.

Q. At that time were the premises—was the building upon the Jenks property, that is the 25 feet adjoining on the west, which you later bought, had that been constructed at that time, the new seven story building?

A. It had not.

Q. About when was that constructed, if you remember?

A. My best recollection is in 1887.

Q. And you purchased that when?

A. In the fall or about New Year's, 1888.

Q. Did you then immediately open, opening the hotel and occupy it yourself as a hotel?

A. I did.

Q. When was the office changed, if at all?

A. The year before the world's Fair, in 1892 or 1893.

Q. The World's Fair was in 1893.

A. Yes.

54 Q. Changed to downstairs you mean?

A. Yes. Changed from upstairs to downstairs.

Q. And how is that office or how was it then arranged, did it occupy any portion of the former yard?

A. Yes, we built over the yard, one story, high, and had the stores that the restaurant was in before changing the office, and rented them out, fronting Clark street, putting the restaurant back under the skylight where the yard used to be.

Q. What became—just a moment. What became, if you know, at that time, of the little driveway eight feet wide on the west of the premises from Van Buren into the yard?

A. That was made a small store of and we took our coal in there instead of driving in there, we took it in through the sidewalk, and dropped it down through the sidewalk and had a runway from the engine room under that small store under the sidewalk from where we got the coal.

Q. So that in 1892, the year before the World's Fair, you then had in the old—in the original building, a narrow eight foot store, or practically that, where the driveway used to be, and east of that two stores, and then the ladies' entrance and east of that the drugstore, is that right?

A. Yes, sir, that is right.

Q. And then on Clark street you had how many stores?

A. There was the drug store, there was four stores and
55 an entrance there from Clark street to the rotunda of the hotel.

Q. Has the general construction of the hotel property above the first floor been radically changed, to any radical extent since you first put up the building except the changes which you have mentioned of the office, from upstairs down?

A. Not to any great extent.

Q. How many rooms are there on the second floor along the south side of the hotel?

A. There are seven rooms.

Q. Large or small, compared to the others?

A. They are the largest rooms in the house.

Q. And on the third floor how many are there?

A. Nine rooms, that includes the Jenks property, remember.

Q. Oh, yes, the seven include the Jenks property?

A. Yes.

Q. Now, when did you—when with reference to the time you purchased the Jenks property did you change or did you connect that with your hotel above the first floor?

A. The parting wall was cut through immediately after I got possession of the Jenks property.

Q. And it has ever been—ever since been used as a part of the hotel, has it?

A. Yes, sir.

Q. Do the floors, or did the floors of the Jenks property substantially jibe with the elevator of the floors of the hotel?

56 A. There is not much difference in the height of the floors either way.

Q. I suppose you adjusted that from floor to floor when you——

A. Some of the floors we had to make a short incline.
Q. Yes.
A. Some have got a step, I believe, one step.
Q. What was the condition of Van Buren street prior to the construction of the elevated loop with reference to grade or width and light, compared to Clark street?
A. The grade was about the same, I think. It had been paved with granite blocks, the two streets, I think, in 1885 or 1886, about the same.
Q. What was the width of Van Buren street.
A. The width?
Q. Yes.
A. I never measured it, but it is on the map as a 66 foot street.
Mr. Mecartney: Clark is an eighty foot street?
The Witness: Yes, sir, that is right.
Mr. Mecartney: Where is the Rock Island or rather the Lake Shore railroad station situated with reference to your property, where was it in those days before the loop?
A. From the building, from the Jenks' building, it is 83 feet to the corner of Pacific Avenue.
Q. Which is now called what?
A. La Salle street.
57 Q. And then you cross south 66 feet and I think the small street, La Salle street now is about 35 or 40 feet wide, between the east side of La Salle and the Rock Island depot.
Q. South of Van Buren?
A. South of Van Buren.

Mr. Walker: What did that used to be, Pacific avenue?
Mr. Mecartney: Pacific avenue, too, yes. I guess it was, south of that.

Q. There has, since the loop has been constructed, been a new depot placed there?
A. Yes, sir.
Q. And at that time it was used by what road, can you tell, generally?
A. There was the Rock Island, the Lake Shore and Michigan Southern and I think the Nickel Plate came in there then. I don't know of any other.
Q. Did you state yesterday—I don't remember whether you did or not—of whom you purchased the west 25 feet?
A. I stated; I made a mistake in the date.
Q. No, I am asking you of whom you purchased. Did you state?
A. No.
Q. Whom did you purchase that from?
A. I bought that from Bernard Curtis.
Q. Did he conduct the negotiations or was there another party concerned in it? It has been referred to here as the Jenks
58 property?
A. Yes, sir.
Q. How does Jenks figure in it?

A. Jenks sold to Curtis. I purchased from Curtis.

Q. Now you were going to say you made a mistake in the date yesterday. What mistake to you desire to correct?

A. It should have been about January, 1887 instead of January, 1888.

Q. On which you purchased the property. Is that what you mean that you wish to correct?

A. Yes, sir.

Q. I show counsel a certain Deed.

Mr. Walker: I object to it, your Honor, on the ground that under the first count in the declaration, or either count there is not any division as to what is fee and what is leasehold. Therefore it is immaterial, irrelevant and incompetent.

The Court: This is a deed, is it not?

Mr. Walker: Yes, it is a deed.

The Court: For 25 feet.

Mr. Mecartney: Yes, your Honor.

The Court: It is competent under the first and second counts.

Mr. Walker: I don't think it is competent under either of them. Therefore I object to it.

Mr. Mecartney: I offer it as plaintiff's exhibit 4.

The Court: I cannot see the ground of any objection to it, so I will have to overrule your objection.

To which ruling of the Court the defendants by their counsel then and there duly excepted.

Said plaintiff's exhibit 4 is as follows:

50 Mr. Mecartney: Mr. McCoy, who if anyone other than yourself attended to the collection of rents of this property from 1890, say, to 1902? That is four or five years before the elevated road commenced its construction, and some four years or so thereafter, who attended during that period the collection of rents for you if there was anyone other than yourself?

A. I don't think there was anyone.

Q. You collected the money yourself?

A. Yes, sir.

Q. And had the leases made out yourself?

A. Yes, sir.

Q. And looked after the tenants?

A. Yes, sir.

Q. Were you frequently during that time upon these premises and if so how frequently?

A. Well, I was down there attending to business sometimes twenty hours a day.

Q. Well, then, as a rule you were there every day; is that the fact?

A. Yes, sir.

Q. Do you remember the advent, so-to-call-it, of the elevated loop? Do you remember the time it was constructed?

A. Yes, sir.

Q. Prior to that time do you remember what if any large office

building had been constructed on Van Buren street east or
60 west of your premises?

A. I am not quite sure with reference to the date of construction of them buildings on the east. I think the Monadnock was up; I don't know, but the Rialto was up before it went up I think.

Q. What building was there, any office building across the street at the corner of Pacific avenue at that time?

A. Yes, sir.

Q. What was that called?

A. It was called the Mendel Building first.

Q. I mean the south side of the street.

A. The south side of the street.

Q. Was that called the Mendel Building?

A. A man named Memory built it.

Q. Henry Memory?

A. Yes, sir.

Q. Then what?

A. Then it was acquired by McShane, I think, from Omaha.

Q. Now state the buildings upon the east or some of them that were constructed immediately before or for some several years before the commencement of the construction of the loop as well as you remember them. You say you are not sure about the Monadnock Building.

A. I think the Monadnock on the north end was built. I am not sure about the construction of the south end of the building.

61 Q. That building runs from Van Buren street north to what, the entire building?

A. The center of the block between Jackson and Van Buren, the north end was constructed first, and afterwards the south end was constructed.

Q. So that you have a block there running from Van Buren to Jackson street?

A. Yes, sir.

Q. Do you remember whether the elevated road right in the block from—in front of your premises was constructed all at one time, or whether there was a part of the structure as for instance the foundations which were put in first?

A. Oh, I think the foundations was put in first, and I think they came from the west. They worked from the west.

Q. Assuming the elevated road in that street was commenced early in 1896 or thereabouts or late in 1895; with the refreshment of your recollection with those dates, can you remember whether the south end of the Monadnock had not been constructed at that time, or is your memory still uncertain about that?

A. I am not quite sure about the south end of the Monadnock. I think the Old Colony was constructed.

Q. Now what building is there right opposite from the Monadnock on Dearborn, facing south on Van Buren, what office building is there there?

62 A. Close to the Monadnock?

Q. Yes, right east of the Monadnock, facing south on Van Buren?

A. Yes, there is the Fisher Building.

Q. The Fisher building has been there many years, has it not?

A. Yes, sir, it has.

Q. Now do you know of the small ten or twelve story building facing north on the first alley on Van Buren? That is, the first alley east on Clark street?

A. I do.

Q. If you were told it was the Brand building that would not help you, would it?

A. I heard yesterday it was the Brand building.

Q. Do you remember about how long after the loop was constructed that that building was constructed, or don't you?

A. I don't think it was very long. I think it was a few years probably after the loop.

Q. Now independently of the Rialto and the Omaha or McShane's Building there, the southeast corner of Pacific Avenue now La Salle, and Van Buren, and the Monadnock, the Fisher Building, the Old Colony, and this Brand Building, has there been any new office building or any, what is known here you might say as sky-scrapers, constructed on Van Buren street, up to say two or three years ago east of Fifth avenue and west of the first street west of State street?

A. None that I know of except the Lake Shore & Michigan Southern has an office building up there.

Q. Yes, for the railroad company's business.

63 A. I think so.

Q. Mr. McCoy, have you had occasion from time to time to observe the effect of the construction of this elevated railroad in the block in front of your premises?

A. I have.

Q. Extending from Clark say, to La Salle?

A. Yes, sir.

Q. What was the effect upon the use of those premises?

A. Do you mean after the erection of the elevated loop?

Q. Yes, the effect upon it and the use of the premises, the enjoyment of them.

A. Well, it has this effect, for the use of that premises as then conducted as a hotel. On the second floor there was the most preferable rooms in the house, fronting Van Buren street. Shortly after the erection of the loop, the construction, we would show them rooms to people, and after they learned that the loop structures was there and it was so noisy they would object to staying in the room and come down to the office and want to be changed.

Mr. Walker: Now I move that be stricken out.

The Court: Yes, it may be stricken out.

Mr. Mccartney: Now, Mr. McCoy, I will ask you later about that. I am laying a foundation for it which I have not yet laid. I did not mean to ask you directly at this time as to the effect upon the trade of the hotel, but I want to ask you what direct effect the operation of the road or the structure there

64

had upon the rooms. I am not asking you for the effect upon the business or the trade, but what was the direct annoyance, if there was any?

A. It made the rooms fronting on the elevated very dark in comparison to what they were before, and it created a noise which was an objection to the business.

Q. How about the first floor where the stores were? In what respect had it any effect, if it had any, on them, on the use of them? I mean on the actual use. I am not talking about rents now.

A. It made them dark. They objected to the road making the stores dark.

Mr. Mecartney: Mr. McCoy, I will ask you this first. How many upright posts are there in the sidewalk along your premises, taking the whole 133 feet if you remember?

A. Do you mean elevated posts?

Q. Yes.

A. I think the posts commencing at the corner of Clark and Van Buren and running west is about 40 feet apart. Probably three posts.

Q. Now, how near are they, or one of them, if there be only one to the entrance, the south entrance to your hotel?

A. It may be twelve feet to the east, the first post from Clark street.

Q. About twelve feet from the east, and then west of that a greater distance?

65 A. West of that forty feet more I think is another post.

Q. How near can you just roughly estimate those posts are to your building or do you remember the width of the sidewalk or about how wide the sidewalk is from the building out to the edge of the sidewalk?

A. I think the sidewalk on Van Buren is ten feet and the area is 3½ feet more, making 13½ feet to the curb wall, and then commencing the street.

Q. This structure is an iron structure, is it not? The superstructure, it is iron.

Mr. Walker: It is steel.

Mr. Mecartney: I meant to say steel. Now where with reference to the station that is right west of your premises does the starting and stopping of trains occur? Does that take place partly in front of your premises or not?

A. It does.

Q. The platform of the station west, does it come or does it not come within the west line of your premises, east of the west line of your premises?

A. It does.

Q. Now you spoke of the interference of the noise of the trains to the rooms of the hotel, or the south side rooms. How much or how many stories does that noise, according to your observance, particularly affect, if at all?

A. It affected the rooms of the second floor fronting south and on the third floor fronting south, more so than the upper rooms.

66 Q. Mr. McCoy, during the time you ran the hotel, and confining your attention to the years beginning in January, say, 1891, and running down to the end of the year 1902; that is, the years that lay between, so-to-speak, 1890, and 1903, did you in the operation of the hotel keep books which showed the rentals received from the different rooms in the hotels; that is, room by room?

A. We did not in that way, no.

Q. What way did you keep your books so far as the aggregate income was concerned?

A. We simply had a cash book and transfer book but——

Mr. Mecartney: In that cash book you had the receipts from the hotel. Is that right?

A. The cash book would show the entry of the money.

Q. Was there at any time any way by which you could have told as you ran that business the particular time when certain rooms were vacant and when certain rooms were occupied and the particular rental taken in from each room? Was there at any time such a book kept?

A. Only in the way I stated.

Q. Would that show it? Would that show the rental of each room separate from all other rooms, and each day?

A. Yes, sir, it would. The cash book would show the
67 rooms and the cash received from them.

Q. It would?

A. Yes, sir.

Q. Well, I didn't understand it. Would it show the time that the room was occupied?

A. The transfer book would.

Q. Now if that is the case, I want to ask you where are the books that show the rental of the different rooms in your hotel, the time they were occupied for the period which I have mentioned, say, from 1891 to 1902, inclusive?

A. Where is the books now?

Q. Yes.

A. I don't know.

Q. Tell what became of them?

A. After I sold out the business and leased the property——

Q. How long ago was that?

A. That was in January, 1910, I destroyed nearly all the books I had, considering them of no value.

Q. What became of the leases of your stores?

A. They were destroyed. A lot of stuff was destroyed there that I didn't think would be necessary to hold any longer.

A. I did't destroy the books. The books were sold as junk and the other papers were sold with them.

Q. You sold a whole lot of stuff then as mere junk?

A. Yes, sir.

Q. Do you know where those book are today, Mr. McCoy?
68 A. I do not.

Q. Do you think it would be possible for you to trace them?

A. I do not think it would.

Q. I will ask you during the period in question that I have mentioned, I will call it a twelve year period, commencing four years before the loop was constructed, and continuing four years thereafter, that is the beginning of 1891 until 1902, what was the character of the trade generally—first I will ask you, was your Hotel European or American plan?

A. European.

Q. What was the character chiefly of the trade with reference to the locality?

A. Well, our trade was mostly from the west. Not so much from the east as the west.

Q. What with reference to being city trade or out-of-town trade?

A. Out of town trade.

Q. To what extent was it out of town trade?

A. Probably ninety per cent.

Q. Do you think, is it your best recollection, that the leases of the stores on Van Buren and Clark Street- as the case may be for the years prior to the construction of the loop as well as the years immediately after, that they went with the sale as old junk or that they were destroyed? What is your recollection about that?

A. I think they went with the others, the books. I do not
69 think I had any further use for them.

Mr. Mecartney: Can you recall those rentals or some of them or have you any memorandum from which you could refresh your recollection and give either all or some of those rentals?

A. I have a memoranda of some that I made since the suit was called.

Q. That is, you mean within the last several weeks?

A. Yes.

Q. Now can you state without the use of that memoranda, starting with the drug store on the corner, the rental that was paid from 1890 on to the beginning of 1898?

A. I think I can remember some of them.

Mr. Mecartney: Do you remember, Mr. McCoy, who the tenant of the drugstore was during the World's Fair, that time; that is from 1891 on to the end of the World's Fair and to 1894?

A. I think his name was George R. Baker.

Q. He was the old druggist connected with Gale & Blocki, was he not?

A. I don't know anything about his affairs.

Q. Now who succeeded Mr. Baker, if you remember?

A. Walter Krouskoup.

Q. He is there now, is he?

A. Yes, sir.

Q. Now do you remember what year Krouskoup succeeded Baker?

70 A. Krouskup came in 1900.

Q. Do you remember whether you collected all the final rental from Baker while he was there?

A. I did.

Q. Can you tell what rental he paid, Mr. McCoy?
A. My best recollection is $2400 or $2500. That was annual.
Q. Do you remember when the $2400 or $2500 rent was collected? During what years?
A. I am not positively sure but I think 1894.
Q. It ended in 1894. Then do you remember what——
A. 1894, yes, I think.
Q. That was the year after the World's Fair closed. Do you remember what the rental was fixed at then and how long it continued?
A. There was another lease at $3600 for five years I think.
Q. And that would take it up to 1899?
A. I think it was $3600.
Q. The next store west from that, start on the west with what is referred to as the Jenks property.
A. At that time it was a barber shop.
Q. From 1891 to 1894. Do you remember what rental you collected at that time from the barber shop?
A. $125 a month I think.

Mr. Walker: Of course the same objection that we had to
71 the other subject matter and I move that it be stricken out.
The Court: Same ruling. He may answer.
To which ruling of the Court the defendants by their counsel then and there duly excepted.

Mr. Mecartney: From 1894 on for the next period, do you remember what rental was paid?
—. Yes, what was the name of the tenant?
A. Dan Hynes.
Q. Do you remember from 1894 on?
A. 1894 on I think he had a lease for $25 a month more. Five years.

Mr. Walker: The same objection. May it be understood that the same objection that I made in the first instance be applied to all these.
The Court: Yes.

The Court: You say $125 or $135?
A. Twenty-five more.
Mr. Mecartney: Take the next store east. The next store east would be the eight foot alleyway that was turned into a store or shop?
A. No.
Q. Was that covered over?
A. The next east is the entrance to the hotel. The entrance to the hotel is east of the barber shop.
Q. But I asked you about the Jenks property?
A. That is west.
71 Q. What have you been telling us about? The Hynes place? Is that the store right west of the entrance?
A. Yes, sir.
Q. We will let that stand. Now I will ask you about the Jenks property on the extreme west, the west twenty-five feet.

Mr. Walker: The same objection.
The Court: Objection.
To which ruling of the Court the — by their counsel then and there duly excepted.

Mr. Mecartney: How was that occupied in the World's Fair years 1891 to 1893, or up to 1894?
A. I think there was a Turkish bath in there.
Q. How had it been occupied before that when you purchased it?
A. There was a bucket shop on the ground floor.
Q. And what succeeded the bucket shop?
A. I think the Turkish bath did.

Mr. Mecartney: How long was the Turkish bath there?
Mr. Walker: That is a good thing to succeed a bucket shop.

Q. Now, Mr. McCoy, how long was the Turkish bath there as you recollect?
A. That was after 1894.
Q. No, whether before or after?
A. I think it was there for three or four years.
73 Q. Now for the time succeeding the World's Fair and up to the time the loop was constructed were those premises vacant or occupied according to your recollection? That is the Jenks property.
A. It *is* occupied part of the time. I don't remember exactly how long it was vacant. It was vacant quite a while.
Q. Do you remember up to what time or how long after the loop was constructed that it was vacant?
A. I don't.
Q. Do you remember when Hammond & Davis moved into that property, about what year?
A. The Turkish Bath property?
Q. No, the Jenks property, Hammond & Davis.
A. I think they moved in in 1900 or about that time.
Q. Now did they succeed that vacancy, so to speak? Was it vacant when they went in?
A. I think it was, sir.
Mr. Mecartney: Do you remember who conducted the Turkish bath?
A. I looked at one period of the lease. I didn't exactly remember. I think Stephen A. Douglas was on the lease.
Q. Who succeeded the tenant that Stephen A. Douglas was interested in?
A. There was a colored man I think that worked for him there.
Q. Do you remember the rental of Stephen A. Douglas and the party interested with him when they occupied it?
74 Mr. Mecartney: As a Turkish bath.
A. I think it was $3,000. I am not quite sure about that figure. I am not quite sure about that. Of course I am doing this from my best recollection.

Mr. Mecartney. Mr. McCoy, take the store next east of the Jenks Building?

The Court: That is a barber shop.

Mr. Mecartney: No, that is a mistake. There is a store between the barber shop that you testified that Hynes occupied, the barber, and the Jenks property?

A. Yes, sir.

Q. There are two stores between, aren't there, including the little eight foot narrow store?

A. Yes, sir.

Q. Now let us take the eight foot narrow store. You said you fixed that up as a store before or after the World's Fair, that used to be the alley?

A. Yes, sir, previous to the World's Fair.

Q. Now who occupied that immediately after you fixed that over as a store or shop?

A. I don't remember his name, but Fetterstock occupied it later on.

Q. Do you remember the rental that you obtained for -his narrow store

A. I think it was $75 a month.

Q. $900 a year?

A. Yes, sir.

Mr. Mecartney: May I ask you this? Do you remember how soon it was rented after you fixed it over for shop purposes or
75 was it vacant a long time or was it vacant a short time?

A. It was rented nearly all the time after I fixed that over. That was just previous to the World's Fair. There was a tenant in there I think before Fetterstock. I don't remember his name.

Q. But your recollection is the first rental was $75 a month?

A. Yes, sir.

Q. Can you recollect the next rental?

—. ——.

—. How long do you remember that the rental was $75 a month? How long did it continue?

A. I think it was $75 a month from 19—from 1900 I think to 1905. That is my best recollection.

Q. You have stated that you fitted it up about the year before or shortly before the World's Fair?

A. Yes, sir.

Q. That would be 1892, about, would it not?

A. Yes, sir.

Q. The rental of $75 a month, how soon after you opened this little shop did it pay $75 a month or did you get a tenant for it who paid that rental?

A. I cannot remember.

Mr. Mecartney: In the early nineties, the basement used
76 down to 1892, how was that first occupied, do you remember?

A. As a saloon and lunch room, business lunch.

Q. Who was the first tenant of those premises?

A. During that time?
Q. Yes.
A. From 1892?
Q. Yes, or '3. Who was the first tenant in 1891, '2 or '3. What was the name of the tenant?
A. I think it was John Trager.
Q. T-r-a-g-g-e-r?
A. T-r-a-g-e-r.
Q. Do you remember the years that he occupied it?
A. I think he occupied it from 1888 to 1893. I am not quite sure about that date. I think about that time.
Q. Is it your recollection—what is your best recollection with reference to his occupying it during the World's Fair years, or the several years immediately preceding the World's Fair?

Mr. Burns: That is objected to.
The Court: He can answer.

77 "PLAINTIFF'S EXHIBIT 1."

This indenture, made this Twenty eighth (28th) day of October in the year of our Lord, One thousand Eight hundred and Eighty-two (A. D. 1882.) Between Albert Keep of the City of Chicago, in the County of Cook and State of Illinois, party of the first part and William McCoy and Marcus A. Devine of the said City of Chicago, parties of the second part.

Witnesseth; that the said party of the first part for and in consideration of the rents to be paid and the covenants and agreements hereinafter mentioned to be kept and performed by the said parties of the second part, their heirs, executors, administrators and assigns hath demised and leased and doth hereby demise and lease to the said parties of the second part all those premises situate lying and being in the City of Chicago, County and State of Illinois, known and described as follows, to wit; The equal undivided one half part of Lots numbered Twenty one (21) and Twenty two (22) in Block numbered One hundred and Fifteen (115) in the School Section Addition to the City of Chicago, County and State aforesaid, To have and to hold the same with the appurtenances unto the said parties of the second part, their heirs, executors, administrators and assigns for the full term of Ninety nine (99) years, commencing on the first day of January in the year of our Lord One thousand, Eight hundred and Eigthty-three (A. D. 1883) and ending on the Thirty-first day of December in the year of our Lord One thousand, Nine hundred and Eigthy one (A. D. 1981.)

Said parties of the second part in consideration of the leasing of the premises aforesaid by the said party of the first part to the said parties of the second part do for themselves, their heirs, executors, administrators and legal representatives covenant and agree
78 to and with said party of the first part, his heirs, executors, administrators and assigns to pay to the said party of the first part or his legal representatives as rent for said demised premises

the full and true sum of Three thousand five hundred (3,500) Dollars per annum for the first ten years of the term of this lease, and Four thousand (4,000) Dollars per annum for the remaining Eighty nine years of said term in equal monthly instalments of Two hundred and Ninety-one and 66/100 (291.66/100) Dollars each for the first ten years and Three hundred and Thirty three and 33/100 (333.33/100) Dollars each for the remainder of said term in advance, the first instalment of Two hundred and Ninety one and 66/100 (291.66/100) Dollars to be paid on execution and delivery of this Lease; the second instalment of like amount to be paid on the first day of February A. D. 1883, and the remaining instalments at the rates aforesaid on the first day of each and every month thereafter during the full term of this lease; such payments to be made in gold coin of the United States of the present standard of weight and fineness and at such place in the City of Chicago as the said party of the first part shall from time to time in writing appoint and in default of such appointment, at the place of business of the said party of the first part or his legal representatives in the said City of Chicago, or if he hath no such place of business, then on the demised premises.

Said parties of the second part further covenant and agree that they will pay or cause to be paid in full all taxes and assessments, water rents and other impositions of every kind and nature whatsoever, ordinary or extraordinary, general or special which may be levied, charged or imposed on said demised premises, or on the buildings and structures at any time situate thereon for the year 1883 and every subsequent year during the term of this
79 lease, and that if at any time such taxes, assessments, water rents or other impositions shall have become due or payable and the parties of the second part or their legal representatives shall neglect to pay the same or any part thereof, it shall be lawful for the party of the first part to pay the same at any time thereafter and the amount of any and all such payments so made by the said party of the first part together with interest thereon at the rate of eight per cent per annum from the date of such payment shall be deemed and taken and are hereby declared to be so much additional and further rent for the said demised premises due from and payable by the parties of the second part.

Said parties of the second part also covenant and agree with the party of the first part that they will and their heirs, legal representatives and assigns shall keep said demised premises in a clean and wholesome condition in accordance with the ordinances of the City of Chicago and directions of its Health Officers, and that they will conform to the municipal and all other laws affecting said premises and the sidewalk and street in front thereof and hold the said party of the first part forever harmless from any penalty or damage charged or imposed for the violation of any such laws or ordinances, whether such violation or delinquency is secretly to the parties of the second part, to tenants of said premises holding under them or to any other person whomsoever other than the party of the first part his heirs, legal representatives or assigns, and further that said parties

of the second part will pay said taxes, assessments, water rents and other impositions in the name of the party of the first part, his heirs, assigns or legal representatives before application for judgment is made and will deliver the receipts for such payments to said party of the first part or his legal representatives within thirty days after such payment.

Said parties of the second part as security for the rents reserved and the agreements herein contained to be kept and performed by them, further covenant and agree to erect and complete upon Lots Twenty one (21) and Twenty two (22) aforesaid within two years from the first day of January A. D. 1883 a good and substantial, first class, brick or stone building of a value of not less than Fifty thousand (50,000) Dollars, which said building shall be constructed in compliance with the ordinances or regulations of the City of Chicago relating to building within the municipal limits thereof, And they further agree that if said building shall be destroyed or damaged by fire or otherwise at any time during the term of this lease, they will rebuild or repair the same within one year thereafter in such manner as shall render said building equal in value to the one destroyed or damaged; and that at all times during the continuance of this lease they will at their own expense keep said building in good repair and condition so that the security furnished by the said building for the rents reserved and the agreements to be kept as herein specified may not at any time be impaired or dimished and also so that the said building can be surrendered up in good order and condition to the party of the first part upon the termination of this lease or sooner determination thereof as hereinafter provided; and that they will also keep said building insured for the sum of Ten thousand (10,000) Dollars in good and responsible Insurance Companies to the approval and satisfaction of the party of the first part; the policies of such insurance to be made payable to the party of the first part and said policies placed in his possession.

It is hereby further understood and agreed between the parties hereto that in event of the destruction or damage of such building the money received by the party of the first part as the proceeds of any policy or policies of insurance of said premises so held by him shall be paid over to the parties of the second part if they shall within one year after such loss or damage completely restore the said building to its former value and condition, but that if they fail so to restore said building within said period, the money so received as the proceeds of such insurance shall be absolutely forfeited to the party of the first part as liquidated damages hereby agreed upon for failure to restore said building within said period.

It is also understood and agreed between the parties hereto that if said parties of the second part refuse or neglect to keep said building insured for the amount aforesaid in the name of and for the benefit of said party of the first part or to pay the premiums for such insurance whenever the same become due and payable, the party of the first part may renew such insurance and pay such premiums and the amount so paid shall be so much additional rent due from the said parties of the second part to the party of the first part and

shall together with interest at eight per cent per annum from the date of such payment be paid at the next rent day.

It is also understood and agreed that interest at the rate of eight per cent per annum shall accrue due and become payable upon all sums of every kind accruing under this lease which may remain unpaid after the same shall become due and payable according to the terms hereof to be computed from the time when said sum or sums become due as aforesaid to the date of actual payment.

82 It is further covenanted and agreed by the parties of the second part that the whole amount of rent reserved and hereby agreed to be paid for said demised premises and each and every instalment thereof and all taxes, assessments, insurance premiums and other sums hereinbefore named which may be paid by the said party of the first part and all costs, lawyers' fees and other expenses that may be incurred in enforcing the provisions of this lease shall be and are hereby declared to be valid and first liens upon any and all buildings, structures and improvements upon said premises and that may at any time be erected, placed or put on said premises by said parties of the second part, their heirs, assigns or legal representatives and upon their interest in this lease and in the premises hereby demised and it is expressly understood and notice is hereby given that no transfer or assignment of this lease or any mortgage judgment, mechanics' or other lien shall in any way or degree affect the claim of the said party of the first part on said building and on the interest of the said parties of the second part in this lease or in said premises for the payment of all the rents and other sums to be taken as rents that may accrue up to the end of this lease.

It is expressly understood and agreed by and between the parties hereto that if any rent above reserved or any part thereof shall be and remain unpaid for thirty days after the same becomes due and payable or if the said parties of the second part shall permit said premises or any improvements thereon to be sold for any tax or assessment and not redeemed within thirty days thereafter or if the said insurance shall be permitted to expire and shall not be renewed on or before twelve o'clock of the day when the same expires as aforesaid, or if the said parties of the second part shall fail to keep

83 and perform any of the other covenants and agreements herein entered into, then and in any such event the said party of the first part his heirs, executors, legal representatives, agents, attorney or assigns may elect to declare the term of this lease ended and may serve notice upon the parties of the second part of the intended forfeiture and determination of this lease and of the forfeiture of all the buildings and other improvements on said demised premises, such forfeiture shall be declared in writing to take effect at a time not less than thirty (30) days after the service of said notice of intended forfeiture, and said declaration of forfeiture last named shall operate as a complete, absolute and irredeemable forfeiture to the party of the first part of the entire interest of the parties of the second part their heirs and assigns in and to this lease in and to the demised premises and in and to all the buildings and improvements thereon as damages for such default, the same

being hereby declared to be liquidated damages hereby agreed upon settled and definitely determined; provided, however, that the said parties of the second part their heirs or assigns may at any time after service of such notice of forfeiture and before the day named therein for such forfeiture to take effect, purge themselves of such forfeiture, failure or neglect, and replace themselves in the same position occupied prior to such default and avoid such forfeiture by a full payment of all sums due with interest thereon at the rate hereinbefore specified and by fully complying with all the agreements to be by them kept and performed as herein set forth.

It is further understood and agreed between the parties hereto that in every case where notice is provided for to be given by said party of the first part to said parties of the second part or in
84 any case when in the opinion of the party of the first part it shall be necessary for the interest of said party of the first part to serve any notice or demand upon the said parties of the second part, their heirs, assigns or their legal representatives concerning this lease or any condition or provision therein or to serve the declaration of forfeiture above provided for, it shall be a sufficient service of any such notice demand or declaration to leave a copy thereof at the place of business of the said parties of the second part or either of them or at the place of business of any one of the legal representatives of either of said parties of the second part if such place of business is known to the party of the first part, or by posting the same at any one of the main entrances of said building, or in case there is no building on said premises, then by posting such notice at the South East corner of Lot Twenty-two (22) aforesaid being also the North West corner of the intersection of Clark and Van Buren Streets, it being understood and agreed that the posting of any such notice at either of the places aforesaid between sunrise and sunset of any day shall be a sufficient notice under the provisions of this lease.

And said parties of the second part further covenant and agree that at the expiration of the term of this lease or any sooner determination thereof, they will yield up said premises to the said party of the first part in good condition together with all the buildings and improvements thereon; it being understood and agreed as a vital condition of this lease that in consideration for the leasing of said demised premises and as further rental therefor the undivided one-half of all the buildings and improvements placed upon lots Twenty-one (21) and Twenty two (22) aforesaid shall become the
85 absolute and sole property of the party of the first part his heirs or assigns at the expiration of this lease or sooner determination thereof, provided however, and it is so understood and agreed between the parties hereto that in case all rents and all sums to be taken as rents shall have been fully paid and all covenants and agreements herein shall have been fully kept and performed by the parties of the second part up to the end of this lease, then and in that event the said parties of the second part may if they shall so elect have a new lease of said demised premises for a further term of Fifty (50) years from and after the expiration of the full term of this lease upon the same terms and with all the covenants and agree-

ments of this lease so far as applicable thereto except that the amount of the fixed annual rental to be paid shall be six thousand (6000) Dollars per annum in gold coin as first herein specified and payable monthly in advance as herein provided for the payment of rent for the first term; provided further, that the said parties of the second part shall give to the said party of the first part six months written notice of their election to renew said lease for the said second term of fifty years and that it is understood that said parties of the second part shall not be entitled to any further or other extension or renewal of this lease.

It is understood and agreed between the parties hereto that if upon the expiration of the term of this lease or sooner determination thereof the said parties of the second part or any of their assigns, legal representatives or tenants of said premises or any part thereof holding under them, or any other person shall not yield up possession of said premises but shall hold said premises or any part thereof one day after the same should be surrendered accord-
88 ing to the terms of this lease, he or they shall be deemed guilty of forcible detainer of said premises under the statute and shall be subject to eviction and removal with or without legal proceedings and the party of the first part or his legal representatives may without notice and with or without process of law, re-enter said demised premises or any part thereof and expel, remove and put out any such person or persons using such force as may be necessary in so doing and said premises repossess as the said first party's first and former estate, anything herein contained to the contrary notwithstanding.

The said parties of the second part further agree not to remove any buildings or other improvements from said premises without the written consent of the party of the first part, and that the said parties of the second part will pay and discharge all costs, attorneys' fees and expenses that shall arise from enforcing the covenants of this lease.

And it is further understood and agreed that all grants, conditions and covenants contained in this lease shall extend to and be binding upon the heirs executors, administrators and assigns of the parties to these presents respectively to the same extent as if the same was in every case so herein expressed.

And Harriet S. Keep wife of the said Albert Keep party of the first part joins in the execution of this lease in token of her assent to and concurrence in the terms and conditions of this lease.

In witness whereof, The said parties of the first and second parts and said Harriet S. Keep have hereunto set their hands and seals the day and year first above written. Executed in triplicate.

ALBERT KEEP. [SEAL.]
WILLIAM McCOY. [SEAL.]
MARCUS A. DEVINE. [SEAL.]
HARRIET S. KEEP. [SEAL.]

87 STATE OF ILLINOIS,
County of Cook, ss:

I, Charles E. Simmons, a Notary Public in and for the said County in the State aforesaid, do hereby certify that Albert Keep and Harriet S. Keep his wife, William McCoy and Marcus A. Devine all personally known to me to be the same persons whose names are subscribed to the foregoing Instrument appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said Instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this Twenty eighth (28th) day of October A. D. 1882.

[NOTARIAL SEAL.] CHAS. E. SIMMONS,
Notary Public.

88 PLAINTIFF'S EXHIBIT #2.

Same as Exhibit No. 1 except as to the names of parties.

89 "PLAINTIFF'S EXHIBIT 3."

This indenture, Made this first day of May, in the year of our Lord one thousand eight hundred and eighty three, between Marcus A. Devine, widower, of the City of Chicago, in the County of Cook and State of Illinois, of the first part, and William McCoy, of the same place, of the second part.

Whereas in and by a certain Indenture of lease, bearing date the Twenty eighth (28th) day of October A. D. 1882, made between Henry Keep, of the one part, and the said William McCoy and Marcus A. Devine, of the other part; he the said Henry Keep, for the considerations therein mentioned, did grant, lease, &c., all that certain piece or parcel of land and premises, therein described as follows, to wit: The equal undivided one-half part of Lots numbered Twenty one (21) and Twenty two (22) in Block numbered One hundred and Fifteen (115) in the School Section Addition to the City of Chicago in the County and State aforesaid. To have and to hold the same with the appurtenances unto the said William McCoy and Marcus A. Devine, their heirs, executors, administrators and assigns, from the first (1st) day of January A. D. 1883, for and during the whole term of ninety nine (99) years from thence next ensuing, and fully to be complete and ended on the Thirty first (31st) day of December A. D. 1981, as in and by the said Indenture of lease, on reference thereto, will more fully appear.

Now this Indenture Witnesseth that the said Marcus A. Devine, for and in consideration of the sum of two thousand, one hundred ($2100.00) dollars, lawful money of the United States, to him in hand paid by the said William McCoy, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred and set

over, and by these presents doth grant, bargain, sell, assign,
90 transfer and set over unto the said William McCoy, his heirs, executors, administrators and assigns, all his right, title and interest in and to the said land and premises above mentioned, and every part and parcel thereof, with the appurtenances; and also all the estate, right, title and interest, term of years yet to come and unexpired, property, claim and demand whatsoever of the said Marcus A. Devine, of, in, and to the same, and every part and parcel thereof, together with the said indenture of lease itself. To have and to hold the said land and premises above mentioned, and hereby granted and assigned, and every part and parcel thereof, with the appurtenances, unto the said William McCoy, his heirs, executors, administrators and assigns, for and during all the rest, residue, and remainder yet to come and unexpired of the said term of years in and by the said indenture of lease granted, in as full, large and ample a manner, to all intents and purposes, as the said Marcus A. Devine, his heirs, executors, administrators and assigns now holds or may at any time hold, and enjoy the same, by virtue of the said indenture of lease. Subject, nevertheless, to the several rents, covenants, conditions, and agreements in the said indenture of lease reserved and contained, which the said William McCoy for himself, his heirs, representatives and assigns hereby assumes and agrees to pay, keep, observe and perform.

And provided further, that said William McCoy for himself, his heirs, administrators and executors will forever save and keep harmless the said Marcus A. Devine, his heirs, executors and administrators from any and all liability, costs, expense or trouble and from the payment of any rent upon or on account of the said indenture of lease from the said Henry Keep to the parties hereto.

And provided further, if the said William McCoy, his heirs, assigns or representatives shall neglect to make any of the pay-
91 ments or keep or perform any of the covenants to be kept or performed by the lessees named in said indenture of lease at the times and in the manner provided therein then and in that case the said Marcus A. Devine, his heirs or personal representatives shall at his or their option have the same right to enforce such payments or compel such performance as the said Henry Keep, his heirs, assigns or personal representatives now have or may have under or by the terms of such lease or otherwise.

And provided further, that the said Marcus A. Devine, his heirs, executors and administrators shall have a first and valid lien upon the said premises, term of years, and improvements for the repayment to him and them of all sums advanced by him or them in consequence or growing out of his liability as one of the lessees in said lease, but it is hereby expressly covenanted and agreed, that in case the said William McCoy, his heirs, executors, administrators or assigns should deem it necessary to borrow money to improve said premises then whatever lien the said Marcus A. Devine may have at the time any money is borrowed as aforesaid, shall be waived so as to stand subsequent to the mortgage or security or securities given on said premises for money borrowed as aforesaid, it being

hereby intended in case of such loan or loans to give the mortgagee or holder of said security or securities a prior lien on said premises, term of years, and improvements.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

MARCUS A. DEVINE. [SEAL.]
WILLIAM McCOY. [SEAL.]

Signed, seal- and delivered in the presence of

——— ———.

92 STATE OF ILLINOIS,
County of Cook, ss:

I, Jay P. Smith, a Notary Public in and for the said County of Cook in the State aforesaid Do hereby Certify, that Marcus A. Devine and William McCoy personally known to me to be the same person whose names are subscribed to the foregoing Instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said Instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this twenty sixth day of July A. D. 1883.

[NOTARIAL SEAL.] JAY P. SMITH,
Notary Public.

No. 484,528, Recorded Jul- 26 A. D. 1883 at 4 o'clock P. M. in Book 1268 of Records, Page 570.

JAMES W. BROCKWAY, *Recorder.*

93 "PLAINTIFF'S EXHIBIT 4."

This Indenture, made this First day of May in the year of our Lord One thousand eight hundred and eighty three, between Marcus A. Devine, widower, of the City of Chicago, in the County of Cook and State of Illinois, of the first part, and William McCoy of the same place, of the second part.

Whereas, in and by a certain Indenture of Lease bearing date the Twenty eighth (28th.) day of October A. D. 1882 made between Albert Keep of the one part and the said William McCoy and Marcus A. Devine of the other part, he the said Albert Keep for the considerations therein mentioned, did grant, lease &c., all that certain piece or parcel of land and premises therein described as follows, to wit:

The equal undivided one half part of Lots numbered twenty one (21) and twenty two (22) in Block numbered one hundred and fifteen (115) in the School Section Addition to the City of Chicago in the County and State aforesaid.

To have and to hold the same with the appurtenances unto the said William McCoy and Marcus A. Devine, their heirs, executors,

administrators and assigns from the First (1st) day of January A. D. 1883, for and during the whole term of ninety nine (99) years from thence next ensuing and fully to be complete and ended on the thirty first (31st) day of December A. D. 1981, as in and by the said Indenture of Lease on reference thereto, will more fully appear.

Now this Indenture Witnesseth, that the said Marcus A. Devine, for and in consideration of the sum of Two thousand one hundred ($2100.00) Dollars lawful money of the United States to him in hand paid by the said William McCoy at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred and set over, and by these presents doth grant, bargain, sell, assign, transfer and set over unto the said William McCoy, his heirs, executors, administrators and assigns all his right, title and interest in and to the said land and premises above mentioned and every part and parcel thereof, with the appurtenances, and also all the estate, right, title and interest, term of years yet to come and unexpired, property, claim and demand whatsoever of the said Marcus A. Devine, of, in and to the same and every part and parcel thereof, together with the said Indenture of Lease itself.

To have and to hold the said land and premises above mentioned and hereby granted and assigned and every part and parcel thereof, with the appurtenances unto the said William McCoy, his heirs, executors, administrators and assigns for and during all the rest, residue and remainder yet to come and unexpired of the said term of years in and by the said Indenture of Lease granted in as full large and ample manner to all intents and purposes as the said Marcus A. Devine, his heirs, executors, administrators and assigns now holds or may at any time hold and enjoy the same by virtue of the said Indenture of Lease. Subject nevertheless, to the several rents, covenants, conditions and agreements in the said Indenture of Lease reserved and contained which the said William McCoy for himself, his heirs, representatives and assigns hereby assumes and agrees to pay, keep, observe and perform. And provided further that said William McCoy for himself, his heirs, administrators and executors will forever save and keep harmless, the said Marcus A. Devine, his heirs, executors and administrators from any and all liability, costs, expenses or trouble and from the payment of any rent upon or on account of the said Indenture of Lease from the said Henry Keep to the parties hereto.

And provided further, if the said William McCoy, his heirs, assigns or representatives shall neglect to make any of the payments or keep or perform any of the covenants to be kept or performed by the Lessees named in said Indenture of Lease at the time and in the manner provided therein, then and in that case the said Marcus A. Devine, his heirs or personal representatives shall at his or their option have the same right to enforce such payments or compel such performance as the said Albert Keep, his heirs, assigns or personal representatives now have or may have under or by the terms of such lease or otherwise.

And provided further that the said Marcus A. Devine his heirs, executors and administrators shall have a first and valid lien upon the said premises term of years and improvements the re-payment to him and them of all sums advanced by him or them in consequence or growing out of his liability as one of the Lessees in said lease, but it is hereby expressly covenanted and agreed that in case the said William McCoy his heirs, executors, administrators or assigns should deem it necessary to borrow money to improve said premises then whatever lien the said Marcus A. Devine may have at the time any money is borrowed as aforesaid, shall be waived so as to stand subsequent to the mortgage or security or securi-
96 ties given on said premises for money borrowed as aforesaid, it being hereby intended in case of such loan or loans to give the mortgagee or holder of said security or securities a prior lien on said premises term of years and improvements.

In Witness Whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

MARCUS A. DEVINE, [SEAL.]
WILLIAM McCOY, [SEAL.]

Signed, sealed and delivered in presence of—
—— ——.

STATE OF ILLINOIS,
Cook County, ss:

I, Jay P. Smith, a Notary Public, in and for the said County of Cook in the State aforesaid, do hereby certify that Marcus A. Devine and William McCoy, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this Twenty sixth day of July, A. D. 1883.

[Jay P. Smith, Notarial Seal, Cook Co., Ill.]

JAY P. SMITH,
Notary Public.

Filed for Record 26th day of July A. D. 1883, at 4 P. M.
JAS. W. BROCKWAY, *Recorder.*

97 STATE OF ILLINOIS,
County of Cook, ss:

I, Joseph F. Connery, Recorder of Deeds and Keeper of the Records, in and for said County in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the record of a certain instrument filed in my office the Twenty sixth day of July A. D. 1883 as Document No. — and recorded in Book — of Records at page —.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at Chicago this Fourteenth day of February A. D. 1914.

[SEAL.] JOSEPH F. CONNERY, *Recorder.*

PL'T'F'S EX. 5.

98 This Indenture, Witnesseth, That the Grantors Benard Curtis and Catherine Curtis (his wife) of the City of Chicago in the County of Cook and State of Illinois, for and in consideration of the sum of One Hundred Thousand Dollars in hand paid, Convey and Warrant to William McCoy of the City of Chicago County of Cook and State of Illinois the following described Real Estate, to wit: The East Twenty five (25) feet of Lots Twenty (20) and Twenty three (23) in Block One Hundred and Fifteen (115) in the School Section Addition to Chicago, together with the improvements thereon.

The said William McCoy is to assume and pay off certain encumbrances on said property, consisting of two Trust Deeds, one for Forty Thousand dollars, dated July 15th, 1885, with interest thereon, at the rate of five per cent per annum, after the First of January, 1887; and the other Trust Deed for Thirty Thousand dollars, payable Two years after the First day of January 1887, with interest thereon at the rate of six per cent per annum, payable semi-annually.

situated in the County of Cook in the State of Illinois hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of this State.

Dated this First day of January A. D. 1887.

BERNARD CURTIS. [SEAL.]
CATHARINE CURTIS. [SEAL.]

STATE OF ILLINOIS,
County of Cook, ss:

I, Michael L. Freiberger, a Notary Public in and for said County, in the State aforesaid, Do Hereby Certify that Bernard Curtis
99 and Catharine Curtis, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing Instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said Instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and Notarial seal, this Fifth day of January A. D. 1887.

[NOTARIAL SEAL.] MICHAEL L. FREIBERGER,
Notary Public.

Warranty Deed, Curtis to McCoy.

No. 787,331.

STATE OF ILLINOIS,
Cook County, ss:

This Instrument was filed for record in the Recorder's Office of Cook County, aforesaid, on the 5 day of Jan'y A. D. 1887, at 2 o'clock P. M. and recorded in Book 2007 of Records on Page 466.
WILEY S. SCRIBNER, *Recorder.*

100 FRANK M. HALLENBECK:

Q. What is your name ?
A. Frank M. Hallenbeck.
Q. What is your business?
A. Commercial photographer.
Q. How long have you been in such business?
A. About fifteen years, altogether.
Q. Did you do any photography work with respect to the McCoy Hotel property at the corner of Clark and Van Buren Streets?
A. I did.
Q. When?
A. Last Tuesday.
Q. Look at the documents now shown you and state if those are the photographs you took at that time?
A. They are.
Q. Look at this photograph labeled "Photo 1" and state if that is one of the photographs which you took of the McCoy Hotel property on the date you have mentioned.
A. That is one of the photographs I made last Tuesday afternoon of the McCoy hotel.
Q. What is the viewpoint of that photograph? That is, where were you standing when you took it?
A. My camera was placed against the east curb of Clark Street and about thirty to thirty-five feet south of the building line of Van Buren Street and the point of view is approximately northwest.

102 The Court: There is another building there that can be seen in the distance.

The Witness: That building does not belong to the McCoys and I was only instructed to take it in here, east of this white one.

Q. Yes. There is a picture of the back of a policeman on that photograph, isn't there?
A. Yes, sir; part of his back.
Q. And his face, which we cannot see, because we see the back of his head, is looking north up Clark Street, as he stands there, apparently, isn't it, just to get the points of the compass?
A. Apparently; yes, sir.

Photo 1

Q. Then this picture is taken from the south-east to the north-west?

A. That is right.

Q. And on the south-east side, or in the street——

A. No, I was on the sidewalk with the front leg of my triped right on the edge of the sidewalk.

Mr. Mecartney: I offer that in evidence as Photo 1."

The photograph referred to was marked "Photo 1," and is as follows:

(Here follows photograph marked 101.)

103 Mr. MECARTNEY:

Q. I show you a second photo marked "Photo 2," and ask you if you ever saw a photo taken—I will ask you if that was a photograph which was taken at the same time, on the same occasion?

A. It was taken immediately afterwards; yes, sir.

Q. What was the viewpoint of that photograph with reference to the viewpoint of the one just offered in evidence?

A. Identically the same.

Q. This Number 2 shows an elevated road train on the west.

A. That was the purpose of taking No. 2 to show the elevated train on the west, to show that elevated train coming along there.

Q. Is it on the north track or on the south track?

A. The north track.

Q. Please look at this photograph marked "Photo 3" and I will ask you if that was taken upon the same occasion by you.

A. It was.

Q. Where is the tripod?

A. I was standing at the foot of the elevated steps of the La Salle Street station on the south side of Van Buren Street and east of La Salle Street.

Q. La Salle Street station of what?

A. Of the loop structure.

Mr. Mecartney: I offer that in evidence.

Mr. Walker: I object to that one.

Mr. Walker: A man standing on the street would not see anything like that at all. A fellow peeking through a little
104 thing like this would be obstructed from seeing the balance of the building, and all there is there at the top, is a blotch.

Mr. Mecartney: He can argue that to the jury.

Mr. Walker: No, I don't need to argue that to the jury. It is not a competent photograph and it misrepresents.

Mr. Mecartney: I object to counsel making that statement.

Mr. Walker: I will prove it by the photograph that it does.

The Court: You may cross-examine him on that.

Mr. Walker: Yes, I will.

Q. Mr. Photographer, look at the exhibit, Photograph No. 3, that I now show you. Would a man standing on the street where you stood, with his naked eye, see anything like that?

A. That is just exactly what he would see; yes, sir.

Q. That is, he would see a blotch?

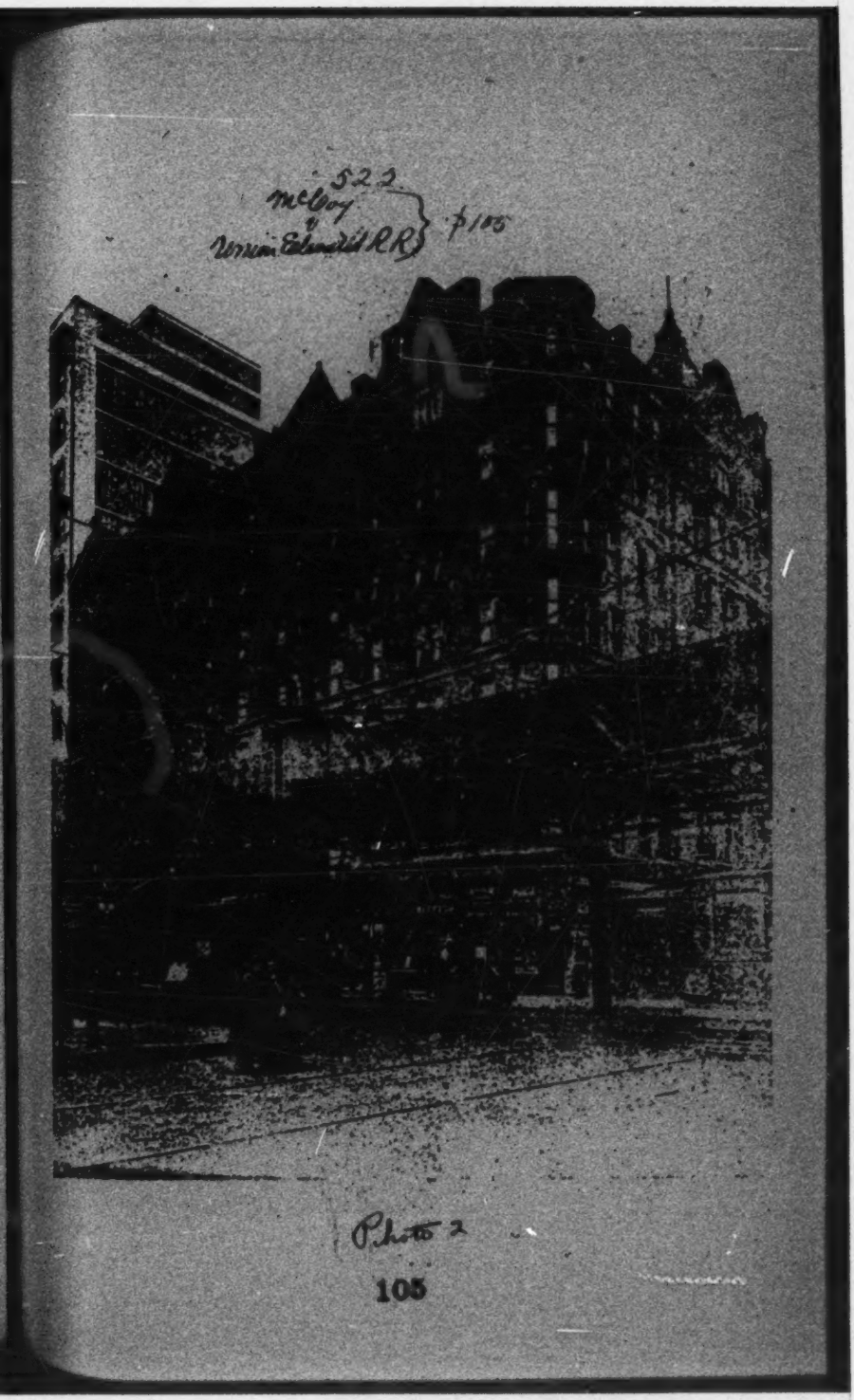
A. He would see a black mass of girders and so forth up on top there where it was dark, under the elevated.

Mr. Walker: Well, I think that Photograph No. 3 is too deceptive to put in evidence.

The Court: I think everybody understands just how these photographs were taken and the situation there in connection with the other photographs. It may be admitted.

Mr. Walker: Exception.

(Here follows photographs marked pages 105 and 106.)


522
McCoy
v
Vernon Edwards R.R.
p 105
Photo 2
105

522
McKay &
Union Blanket
RR

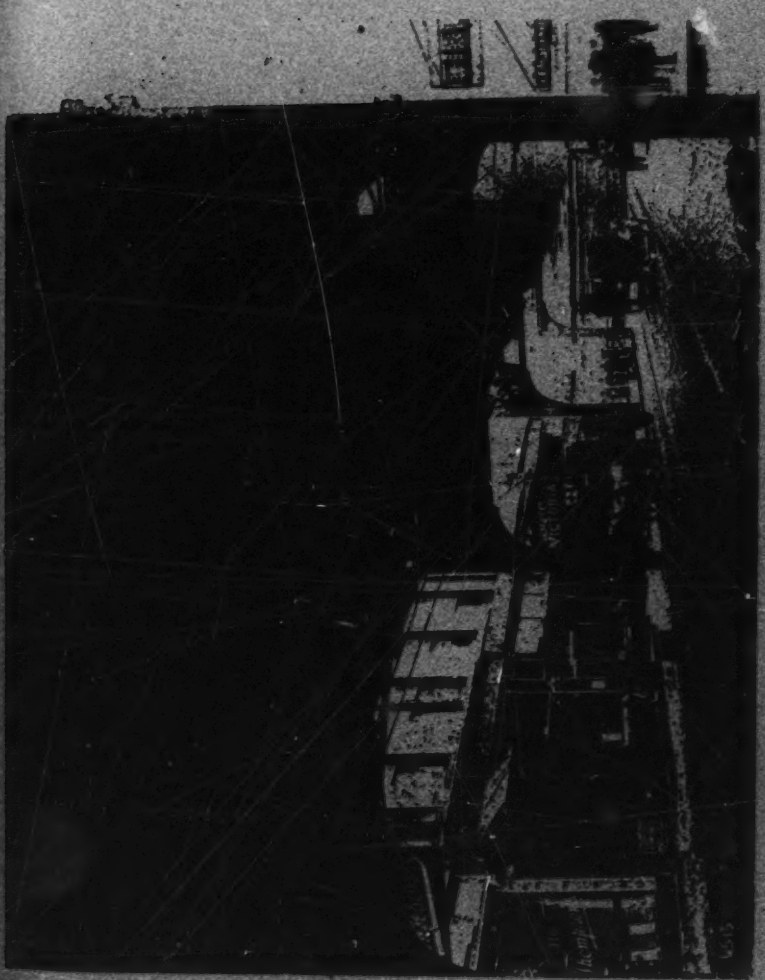


Photo 3

5'22
mcfoy
Union Columbia Ill. } #108

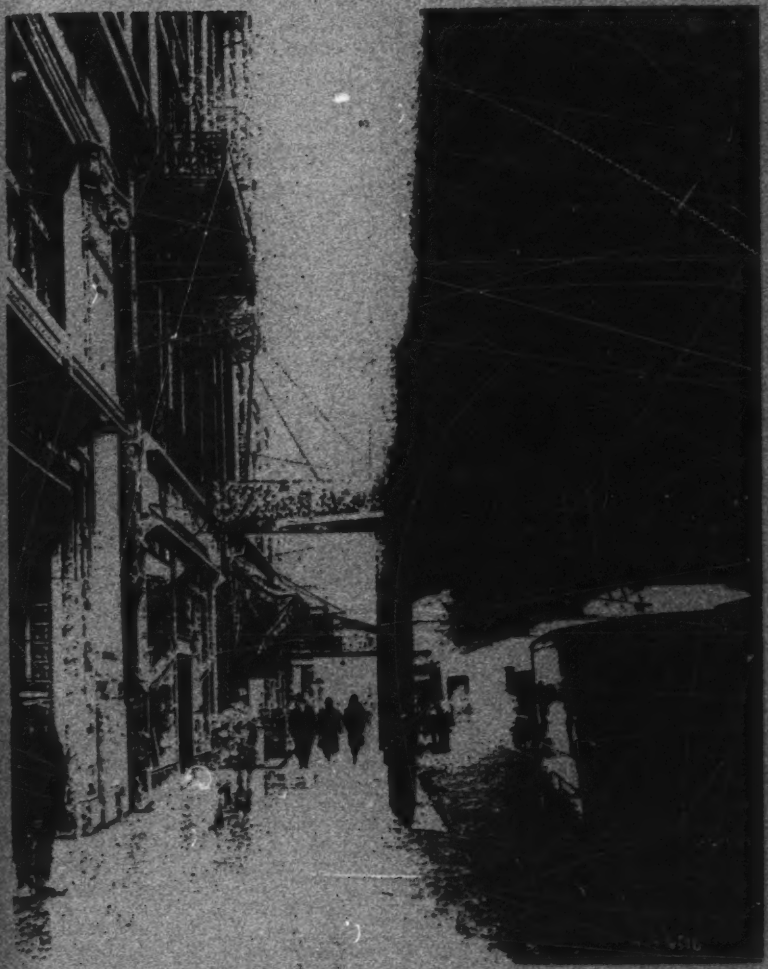


Photo 4

108

107 Mr. Mecartney:

Q. I show you Photo 4. Did you take that upon the same occasion?

A. I took that upon the same occasion; yes, sir.

Q. Where is the viewpoint of that photograph?

A. I was at the foot of the steps on the north side of Van Buren Street and just east of La Salle Street.

Q. The foot of the steps of what?

A. Of the elevated structure, the La Salle Street depot on the right.

Q. Then you were standing at the foot of the steps corresponding to the steps where you stood in Photo 3 and just immediately north of it. You were just immediately north then of where you stood in taking Photo 3?

A. That is right, on the opposite side of Van Buren Street, on the opposite side of the street.

Mr. Mecartney: I offer that in evidence.

Mr. Walker: I make the same objection to that one.

The Court: I think each one should be taken relatively and with the examination here, showing what it purports to be, and I think it may be admitted.

Mr. Walker: Exception.

Mr. Mecartney:

Q. Look at this photograph marked "Photo 5," and I will ask you if you took that photograph on the same occasion.

A. I did.

(Here follows photograph marked page 108.)

108½ Q. Where is the viewpoint?

A. I was standing at the northeast corner of the curb line of Van Buren and Clark Street, looking west.

Mr. Mecartney: I offer that.

Mr. Walker: I don't see any objection to that one.

Mr. Mecartney: That is all, Mr. Hallenbeck.

(Here follows photograph marked page 109.)

522
McCleary
v
Nassau Electric RR } 4105

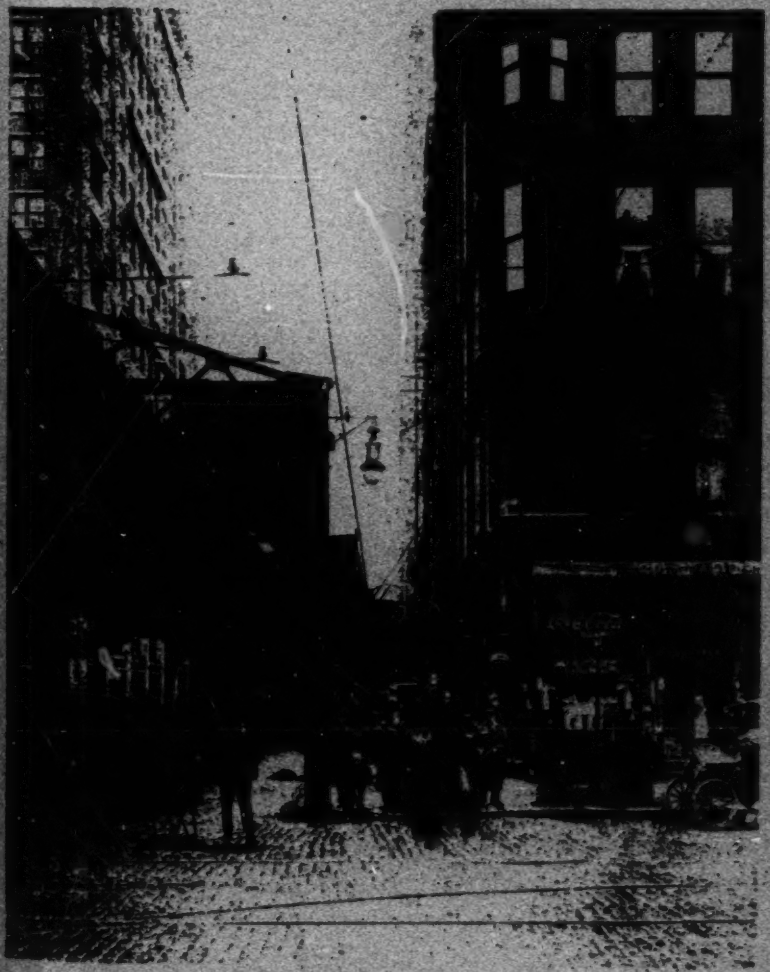


Photo 5

110 WILLIAM McCOY:

Q. What changes, if any, have been made in the elevated road structure in front of your premises since the time the structure was first put up?

A. They have extended the platform further east, one section; that is, we call it a section, between the posts.

Q. How long ago was that done?

A. Why, about thirty days ago.

Mr. Mecartney: Now, my question is, is that platform, that extension on the north side of the structure visible from that photograph at all? Do you see it there? I am speaking of the extension of the platform.

A. No, no.

Q. Now, look at photo No. 2 and see if it is visible there.

The Witness: No, it is not visible.

Q. And photo No. 3, does it appear there to you, in look-
111 at that photograph?

A. It does.

Q. How wide is that extension on the north side, about, that platform extension, in your judgment?

A. Oh, eight feet. Maybe eight feet. The platform.

Q. Now, look at photo No. 4. Where is that extension with reference to where the viewpoint of this photo is? Where is that extension, between what—With reference to that first post, would you say.

A. Well, it runs from that post—it runs further than that post, I think, back west.

Mr. Mecartney: Now, look at Photo 5. Is it visible at all in that photograph?

A. No, it is not.

WALTER H. KROUSKUP:

Q. What is your name, please?

A. Walter H. Krouskup.

Q. Your business is what?

A. Retail druggist.

Q. Where are you located?

A. Corner of Clark and Van Buren.

Q. What is the building in which you are located known as, if you know?

A. It is now known as the Victoria Hotel.

Q. It formerly known as what?

A. McCoy's Hotel, McCoy's European Hotel.

Q. When did you go there and occupy those premises as a druggist?

112 A. 1900.

Q. Who occupied them or had them immediately preceding your occupation?

A. George R. Baker.

The Court: The question is, do you know of your own knowledge what the rental paid by George R. Baker was?

A. I cannot recall. I should know that, too, because I paid 25 days of the old lease.

Q. When you rented those premises in 1910, did you take a lease in writing from Mr. McCoy?

A. I have the lease before me here.

Mr. Mecartney: We offer this lease dated March 22, 1900, between William McCoy as lessor and George R. Baker as lessee for a term commencing May 1, 1900, and extending to April 30, 1903, for the rental of $425 a month, and containing therein certain conditions as to the rental, the furnishing of heat, light, power and so forth. Plaintiff's exhibit 5.

Cross-examination.

By Mr. Walker:

Q. And when you went there, to the best of your knowledge, Mr. Baker had been there ten years?

A. Well, he had been there five years anyhow. I think longer, but he had been there five years anyway.

Q. And you bought him out?

113 A. Yes, sir.

Q. This lease begins on the first day of May, 1900 and ends on the first day of May, 1903. Did you make a new lease then?

A. Yes, sir.

Q. For how long?

Mr. Mecartney: That is objected to as immaterial and incompetent after 1903.

The Court: He may answer.

Mr. Mecartney: Then I want to be heard, your Honor. This is a very important part of the evidence.

Objection overruled.

Q. Did you make a lease after that, that would be 1905, that carried you how long?

Mr. Walker: Did you?

A. Yes.

Q. For how long in 1905?

A. Five years.

Q. And since 1910 have you made another lease?

A. Yes, sir.

Mr. Mecartney: Objected to.

Mr. Walker: For how long?

The Court: He may answer.

A. Five years.

Mr. Walker: That expires a year from this coming May?

A. Yes, sir.

Q. What is the rental in the lease from 1903 to 1905?

114 Objected to by counsel for plaintiff; objection overruled by the Court.

A. Six thousand dollars a year.

Q. Has there been any decrease in rentals below six thousand dollars a year, from 1905, up to the present day?

Objected to by counsel for plaintiff; objection overruled by the Court.

Mr. Mecartney: You must not tell what it was.

Mr. Walker: No, but has it been any less?

A. No, sir.

Q. Has there been an increase in rental from that time up to the present time?

Objected to by counsel for plaintiff.

Mr. Walker: That is proving the increase. I do not ask him to say what it is.

The Court: I think I will let him answer.

A. Yes, sir.

DANIEL J. HYNES, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined in chief by Mr. Mecartney and testified as follows:

Q. Your name, please?

A. Daniel J. Hynes.

Q. Your business, Mr. Hynes?

A. Barber business.

115 The Court: How many years?

A. Thirty years last November.

Mr. Mecartney: Did you ever have a barber shop in what was known as the McCoy Hotel property, corner of Van Buren and Clark?

A. Yes, sir.

Q. Do you remember what year it was that you opened there?

A. Yes, sir.

Q. Please state?

A. 1887.

Q. And you continued there how long?

A. Until four years ago.

Mr. Walker: Do you mean 1910.

A. Yes, sir.

Mr. Mecartney: Mr. Hynes, first tell us which store was it you occupied?

A. 121 East Van Buren.

Q. Where is that with reference to the ladies' entrance on the ground floor? Next to the hotel?

A. Right next to it.

Q. East or west?

A. West of the entrance.

Q. Now tell us when you first occupied those premises how long a lease did you take?

A. Two years.
Q. That would take you to 1889?
A. Three years. Two years the first one. Yes, 1889.
Q. How long was the next lease?
A. Two years again.
Q. That would take you to 1891?
A. Yes, sir.
116 Q. And then what was the next lease?
A. Five years.
Q. That would take you from 1891 to 1896?
A. Yes, sir.
Q. Can you tell us what the rental of that lease was?
A. The rental of that lease, the first year of that five-year term was $125 a month, and the next four years it was to be at $150. The first year of that term was World's Fair year and the year after World's Fair the business was pretty quiet and along in that fall——

Objected to by counsel for defendants.
Mr. Mecartney: We will come to that later possibly.

Q. In 1896, your five-year lease would carry you from 1891 to 1896?
A. Yes, sir.
Q. Does that accord with your recollection?
A. Yes, sir.
Q. In 1896 did you make a lease?
A. Yes, sir.
Q. For one year?
A. Yes, sir.
Q. What was the rental in that lease?
A. The rental was $140 a month, a one year lease.
Q. That would carry you to the spring of 1897?
A. Yes, sir.
Q. In the spring of 1897 did you make another lease?
A. Yes, sir.
Q. What was the rent?
A. Just the same, $140.
Q. That was the same?
A. That was after he improved the hotel and put the office downstairs.
117 Q. That was for three years?
A. Yes, sir.
Q. In 1900 did you make another lease?
A. Yes, sir.
Q. How long was that lease?
A. A Year.
Q. What was the rental under that?
A. The rental then was $15 a month more.
Q. $155 a month that would be.
A. That included light, too.
Q. And then in 1892 when it was known the World's Fair was

coming your lease from 1892 to 1894 was part of a five year lease remaining?

A. No, four year lease. The lease was made before that.

Q. For $150 a month?

A. The five year lease called for one year at $125 and four years at $150.

Q. The World's Fair was to be the one year——

A. I paid that one year, $150.

Q. After that Mr. McCoy reduced it, after that one year to $125 again?

—. ——.

Q. Then you made a lease in 1896 for a year or more?

A. One year $140 a month.

Q. Then you made a lease in 1897 at the end of that year?

A. At the same rate.

Q. For two years?

A. Three years, the same rental, and he charged me $10 for electric light, made $150 for three years.

118 Q. My memorandum is 1897 to 1899 and 1899 to 1902.

A. After the one year's lease I made a three year lease. That included light. He left the rent the same and charged $10 for light.

Q. From 1902 it was $166.60?

A. $166.60.

Q. $166.60, and then from 1902 to 1905 it was $175?

A. $175.

Mr. Mecartney: Wait, don't answer, when I object. I object to that.

The Court: He may answer.

A. $175.

Mr. Walker: From 1905 to 1910.

The Court: Don't state the amount.

Mr. Walker: I won't. You took another lease?

A. Yes, sir.

Q. What was the amount?

Objected to by counsel for plaintiff; objection sustained; to which ruling of the Court the defendants by their counsel then and there duly excepted.

Q. Was it less or more?

Objected to by counsel for plaintiff; objection overruled.

A. A little more.

119 JOHN E. DAVIS, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined in chief by Mr. Mecartney and testified as follows:

Q. What is your name?

A. John E. Davis.

Q. Your business?
A. Buffet business.
Q. Did you ever have a buffet—or occupy premises, the store premises on Van Buren Street in what was known as the McCoy Hotel property?
A. Yes, sir.
Q. What particular portion of those premises or what store did you occupy?
A. 123.
Q. Where is that with reference to the Ladies' Entrance of that hotel on the ground floor?
A. The second door west.
Q. Is it next to where Hynes' barber shop used to be?
A. Right west of it; yes, sir.
Q. For what purpose did you occupy those premises?
A. Buffet.
Q. When did you first go there, if you can remember?
A. February 24th, 1894.

Mr. Mecartney:

Q. Did you at that time take a lease of the premises from Mr. McCoy?
A. I think we had a lease from Shibley at that time.
Q. Who was Shibley?
A. He was the party that had had it for sale, the party
120 that we bought out, from Shibley, that died, Mr. Lydston.
Q. Do you remember—do you know where that lease is today?
A. It is destroyed now. All of the leases are that I had. I destroyed them four or five years ago.
Q. After the expiration of that did you continue to occupy the same premises for awhile?
A. Yes, sir.
Q. Can you tell me how long you occupied that particular store there, up to what year?
A. No, I can't tell that.
Q. Was it after the elevated road had been put in operation?
A. Well, I can't say as to that. We moved out of that room into another one west of that, a larger room.

Mr. Mecartney:

Q. How long did you stay—how long did you conduct the business at that place?
A. To 1905.
Q. You don't remember whether it was after the loop was put in operation that you changed from the east store to the west store?
A. I think it was after the elevated was up, yes; I know that.
Q. Now, can you tell me when you went to the first store how long a lease you made?
A. Three years, I think.
Q. What is the answer?
A. Three years.

121 Q. Now, do you remember what rental, starting back with the Shibley lease, do you remember what rental you paid or assumed in the Shibley lease when you first went to the east store?

The Witness:

A. I think $150 a month.

Mr. Walker: I want to object before the witness answered, Judge. I want to make the same objection that I did to Mr. McCoy, because he—On the same ground. He took his leases and sold them to a junk dealer.

The Court: The objection will be overruled, unless Mr. McCoy can find the leases, and the leases will be introduced.

To which ruling of the Court the defendants, by their counsel, then and there duly excepted.

Mr. Mecartney: Yes. All right.

Q. Now, do you remember what the rental was of the next lease which you took immediately after the Shibley lease expired?

A. I don't remember what the rent was, but I know it was more.

Cross-examination.

By Mr. Walker:

Mr. Mecartney: Mr. Walker, there is possibly one more question that I want to ask him.

Mr. Walker: Go ahead. I have only asked his name.

122 Q. Please tell us, if you know, how you came to destroy your old leases and data pertaining to this rental?

A. How what?

Q. How did you come to destroy that, on what occasion?

A. Well, I had them laying home in the basement. They were no good to me and I finally threw them in the furnace one day, with a lot of other old books that I had.

Q. Your firm was Hammond & Davis?

A. Yes, sir.

Q. You first bought out some one who had a lease of the store next west of the barber shop?

A. Yes, sir.

Q. Now, at that time the elevated railroad, you think, was in the street and the station was at La Salle Street with a stairway running down pretty near in front of your saloon or within a few doors of there?

A. Yes, sir.

Q. How long was your lease?

A. Not over three years.

Q. Yes; that would be from 1897 to 1900, as you remember it. My memorandum is from 1897 to 1902, and 1902 until 1905.

Mr. Walker:

Q. Was the period between 1897 and 1902, that five years, divided into two leases, or was it one lease that ran five years?

A. It must have been two leases.
Q. What was the rent?
A. Well, I think when we first went in there, I am not
123 positive, but I think we paid $2,000 a year.
Q. Don't you recall that it was $250 a month—Well, your best recollection is $2,000 a year?
A. $2,000 a year.
Q. That is after the first two years?
A. Yes, sir.
Q. What did you pay the next year?
A. I think about $2500 a year.
Q. $2500 a year. Now, what did you pay—That is the next two years and then you took a lease in 1902 that ran to 1905?
A. Yes, sir.
Q. What did you pay?

Mr. Mecartney: I object to that as coming down too late.

The Witness: $3,000 a year.

The Court: He may answer.
Mr. Mecartney: Well, I just want to save the record on it. Exception.

Mr. Walker:

Q. That is when you paid $250 a month or $3,000 a year.
A. $250 a month, $3,000 a year, yes, sir.
Q. Now, at any time from the time you went in this new place, which is under the Jenks building, was there any decrease in the rent?
A. Never; no, sir.
124 Q. A continual increase, wasn't there?
A. Yes, sir.
Q. What was the number when you moved into what we call the Jenks Building, the next building?
A. 125.
Q. What was the depth of that store?
A. Well, that is quite a deep store. I should judge about 40 or 45 feet deep.
Q. A much larger building than the other?
A. Yes, sir.

NICK MOEHL, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined in chief by Mr. Mecartney, and testified as follows:
Q. Please give your name?
A. Nick Moehl.
Q. What is your business, Mr. Moehl?
A. Saloon and restaurant.
Q. Did you occupy any portion of what is known as the McCoy Hotel property at the corner of Clark and Van Buren?
A. I did.
Q. When did you open business there?

A. Well, my brother opened it on May 1st, 1907, or 1897.
Q. 1897?
A. Yes.
Q. Can you tell, independently of the leases, or do you recall the rental of that first lease which your brother made?
A. I do.
125 Q. Will you please state——

The Court: What premises were these?

Mr. Mecartney:

Q. What premises were these?
A. It was the basement, under the drug store.
Q. The basement under the drug store?
A. Yes, sir; on the corner.
Q. Could you tell about how big it was, Mr. Moehl?
A. Well, of course I don't know exactly. It was about forty by forty, or something like that.
Q. Will you state the——
A. $250 a month.
Q. Do you remember how long that first lease extended to?
A. Five years.
Q. From 1897 when your brother went there to 1902?
A. Yes; and then I made the three and the five after that.

Cross-examination.

By Mr. Burns:

Q. Now from 1898 to 1902 you occupied the premises?
A. Yes, sir.
Q. What rent did you pay?
A. The same rent.
Q. From 1902—you made a lease in 1902 for a future period, did you?
A. Three years.
126 Q. For three years?
A. Yes.
Q. That is 1905. What rent was that?

Mr. Mecartney: That's objected to.
The Court: Objection overruled.
Mr. Mecartney: Exception.

Mr. Burns: What is the answer?
A. Three hundred dollars, including light.
Q. Then from 1905 to 1910 did you occupy under the lease?
A. Yes.

Mr. Mecartney: That's objected to.
The Court: He may answer.

The Witness: I did.

Mr. Burns:

Q. State to the Court what your rent was.

Mr. Mecartney: Objected to.
The Court: Objection sustained.
Mr. Burns: Exception.
To which ruling of the Court the defendants by their counsel then and there duly excepted.

Mr. Burns:

Q. Was there an increase of rent after 1905?

A. There was.

Mr. Mecartney: Objected to.
The Court: He may answer—well, the answer may stand.
Mr. Mecartney: Exception.

The Witness: There was.

127 Q. Where was the location of the stairway on the Clark street entrance?

A. It was right on the corner.
Q. Where was the Van Buren street entrance?
A. Why, about twenty feet off the corner, off of Clark, on Van Buren.

WILLIAM E. McCOY, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined in chief by Mr. Mecartney and testified as follows:

Q. Your name, please?
A. William E. McCoy.
Q. You are the son of the plaintiff in this case?
A. Yes, sir.
Q. Did you have anything to do with any disposition of his hotel books and papers at that time or after that, shortly after?
A. I did.
Q. State the occasion and what you had to do with it and what you did.
A. Well, the books, the registers and cash books and the ledgers and so forth naturally accummulate and we saved them, and at that time there was quite a quantity of them, and those, among other things, suitcases and so forth, were sold to a junk man.
Mr. Burns: Suitcases?
The Witness: Yes, suitcases. They were all sold at the same time. Baggage.

128 Q. Did you have charge of selling them to the junk dealer?

A. I did.
Q. Can you give the junk dealer's name.
A. I cannot.
Q. Did you know where his place of business was?
A. I did not.
Q. Had you seen him before?
A. I had. We had dealings with him before.
Q. In what way?

A. Well, he was in the habit of calling in once in a while and wanting to know if we had anything to sell in his line and once in a while we had old stuff that would accumulate, but we had never sent for him to my knowledge.

Q. Could you have any means of locating him today at all or tracing him down?

A. I could not, no.

Q. Can you give the year of that?

A. Why, as near as I can remember that was 1910.

Q. Do you remember what books were included among others in all this truck that you sold?

A. Well, I know that there were registers, hotel registers, cash books, ledgers and reference books, mail forwarding books and such as that, and there were some books or papers and one thing and another. As to the detail-. I could not say as to what they were.

129 WILLIAM McCOY, the plaintiff herein, resumed the stand for further direct examination by Mr. Mecartney and testified as follows:

Q. Now, what portion of your premises did Donohue & Cleary occupy?

A. They occupied what was then known as 123 Van Buren street. 123 Van Buren street.

Q. Who was the next tenant after Donohue & Cleary, or do you know? How early did they occupy the premises?

A. They were the first tenants I think. I think they went in in 1884.

Q. How long about do you remember were they there. I don't care to bring out any rentals on that particular.

A. Why, I think it was a five year lease. I think they stayed there five years. I am not quite sure, but I think they stayed there five years.

The Witness: I remember the lease to Donohue & Cleary.

Mr. Mecartney:

Q. What is that?

A. I remember the lease to Donohue & Cleary. I remember that lease. That was the first lease made there.

Q. It ran five years, and that carried you down to 1889?

A. I think so.

Q. Now I will ask you to state what that rental was?

A. That rental was four thousand dollars a year.

Q. What portion of your premises was it that the man named Pollendeck occupied?

130 A. That was a store, No. 123 Van Buren street.

Q. For what purpose did he use that?

A. Restaurant. My best recollection is that Pollenbeck occupied the store from 1900 to 1910.

Q. Well, what roads connect with the loop?

A. Well, they are all connected with the loop, I believe.

Q. Well, give the names of them all.

Witness: There is the alley "L," that we call the South Side, and there is the Lake Street and the Metropolitan and the Northwestern.

Q. Now, Mr. McCoy, I will ask you whether during the period which I have asked about heretofore, say, 1890—no, I withdraw that. I will ask you whether, after that road was put in operation you had occasion to observe the effect thereof upon the rental of the Van Buren street rooms of that hotel?

A. I did.

Q. What was that effect?

Mr. Walker: That's objected to, the point being this: This is a going hotel business, and the effect upon one portion of the hotel is not admissible without the effect upon it all. Now if your Honor says my point,——

Mr. Mecartney:

Q. Mr. McCoy, was there any difference in respect to the
131 occupancy of the rooms on the second floor, on the Van Buren street side, and the third floor, before and after the elevated road was constructed.

A. There was.

Mr. Mecartney: What was that difference?

A. The rooms were not—I didn't quite understand the question.

Q. I say, what was the difference in the occupancy?

A. The difference in the market value?

Q. No. I don't mean value, but the general occupancy or state of occupancy of the rooms, after the road was constructed, immediately before it was constructed, and then after it was constructed.

Mr. Burns: We object to the question upon the ground that he cannot separate one part of the hotel from the other.

The Court: All right. Objection overruled.

Mr. Mecartney:

Q. The Court said you may answer.

A. The rooms were not occupied so much after the erection of the road as they were previous.

Q. What were the best rooms before the erection of the road, what were the best rooms or the most valuable rooms in your hotel?

Mr. Walker: Objected to.

132 The Witness: The second floor.

The Court: Well, he stated that before, but he may state it again.

To which ruling of the Court the defendants by their counsel then and there duly excepted.

The Witness: The second floor of the hotel, fronting Van Buren street.

Q. State in what way, if any, the general course of renting of the second and third floors on the Van Buren street side of the hotel, was affected by the operation of the loop road?

Mr. Walker: Now, that is objected to.

The Court: That is calling, in the first place, it is asking for a conclusion, and in the second place I think it is calling for general information upon something that the best evidence of is the books and registers, and there is no means that the Court knows of to put in testimony of this kind in view of the situation as it has developed here, namely, that, all the books are gone, you understand——

Mr. Walker: On the defendants' part——

The Court: —and therefore there would seem to be some doubt about the question anyway, Mr. Mecartney, in my mind, so I will sustain the objection to that question, the Court being of the
133 opinion that having shown what rooms were rented and the fact that the rooms did not rent as readily as they did before, that for all intents and purposes the effect of that road upon certain rooms, is in evidence, from that standpoint.

Mr. Mecartney:

Q. Now, Mr. McCoy, before the elevated road was constructed in Van Buren street, can you state, in general, what was the state of the second and third floor rooms on the south side of that building with reference to being occupied or vacant.

The Court: If he can state.

Mr. Walker: You overrule our objection?

The Court: Yes.

To which ruling of the Court the defendants by their counsel then and there duly excepted.

The Witness: They were occupied pretty much all the time.

Mr. Mecartney:

Q. After the road was put there, what was the situation?

Mr. Burns: We object to that.

The Court: He may answer.

Mr. Walker: On the same grounds, Judge.

The Court: He may answer.

The Witness: They were not occupied nearly so much as
134 previous.

Q. After the World's Fair, what was the condition of the hotel business for a number of years?

A. Well, it was not very good.

Q. And when did it pick up, about?

A. Oh, it ran along until about—it ran along for about four years.

Q. Yes. I mean generally. Do you recall any general financial effect that affected the whole country, that was largely coincident with the revival of the hotel business?

A. The times got better all through the country, and consequently the hotel business got better.

Q. And about how long—you say that was about four years after the panic?

Mr. Walker: Four years after the World's Fair.
Mr. Mecartney: Oh, after the World's Fair, I mean.

A. Yes.

WILLIAM McCOY resumed the stand for cross examination by Mr. Walker, and testified as follows:

Q. When was the building completed as first planned on the Clark street property, I am now leaving out for the present the 25 foot that is—the 25 feet, the eastern 25 feet of the two lots that faced on La Salle, and I am leaving that out now. When was that
135 building completed?

A. It was completed——

Mr. Mecartney: Van Buren—you said La Salle, you mean Van Buren, don't you?
The Witness: About the first of June, 1884.

Mr. Walker: The Jenks' property is the east 25 feet of the lot that faces on La Salle?
Mr. Mecartney: Oh, yes.
Mr. Walker: I am speaking of the other property as distinguished from that strip you got, known as the Jenks' property, when was that building completed?

A. About the first of June, 1884.
Q. Now, then, when was it finished in 1884—when it was finished in 1884 how many stores were there on Clark street?
A. There were four stores.
Q. You didn't understand me. I asked what the frontage is of the drugstore north and south.
A. I think 24 feet.
Q. Twenty-four feet?
A. Yes.
Q. Well, that corner was always a drugstore, wasn't it?
A. I can't say that it was. I think there was something else in there.
Q. Well, it has been a drug store at least for many many years?
A. Yes, sir.
Q. How long before—and long before the elevated railroad was put up in Van Buren street, isn't that right?
136 A. Yes, sir, that is right.
Q. What is the depth of that drugstore?
A. What is it?
Q. What was the depth of that drugstore?
A. The depth?
Q. Yes.
A. I think about 45 feet.
Q. When did you cease, yourself, if at all, to have a restaurant?
A. When did I cease?
Q. Yes.

A. Well, now, until I rented the hotel to these people, but I changed the location of the restaurant to the back room after changing the hotel the year previous to the World's Fair, and I made a small restaurant under a skylight and took up the yard that was there open clean from the ground floor to the top, and then I covered the yard over and made a small restaurant out of it.

Q. One store?

A. One story; yes, sir.

Q. Oh. Now, when you brought this office downstairs then you rented out those two stores to other businesses?

A. I did.

Q. In 1892, and that was the shape it was in——

A. Yes, sir.

Q. The 95 north and south frontage, both front and rear, that was 95 feet, wasn't it?

A. That block is not exactly square. There is a surplus there, both ways, I think in that block, and it is my impression that
137 the lot is a little bit wider in the rear than it is——

Q. North and south than it is in front?

A. Yes.

Q. And all the property is occupied, both the Jenks' 25 feet and your leasehold on Clark street, with the exception of that light shaft, all occupied by that building?

A. Yes, sir.

Q. Now, Mr. McCoy, in 1887, you bought the building and the ground, the fee of it?

A. I did.

Q. I think that is right from your deed on the 25 foot strip.

A. Yes, that is right.

Q. The building was there, erected then?

A. Yes, sir.

Q. How long had it been up?

A. Probably two years.

Q. Two years?

A. Yes. Maybe a little longer, but I think about that.

Q. Well, it was built about six months or a year after you put up the corner building?

A. I think so; yes.

Q. That 25 feet. Who did you buy it from?

A. Bernard Curtis.

Q. Well, you said something yesterday, that Curtis had acquired it from Jenks.

A. He did, yes.

Q. Do you know how much the building on that 25 feet
138 cost?

A. I don't.

Q. Your deed offered in evidence says that the consideration was $100,000. Was that in fact the actual consideration?

A. That was in fact the actual consideration.

Q. And that included the building?

A. And that included the building; yes, sir.

Q. You say the building is a seven story building.
A. It is.
Q. Well, I mean seven above the street level.
A. Yes, sir.
Q. The floors are very little different above the first floor in altitude from your hotel floor?
A. There is very little difference.
Q. Now, when you acquired that in 1887 you—Were the upper floors then divided into rooms or were they lofts?
A. They were offices.
Q. They were offices?
A. Yes, sir.
Q. With an entrance on Van Buren Street?
A. With an entrance on Van Buren Street.
Q. Before you purchased it?
A. Yes, sir.
Q. Now, did you take out that entrance on Van Buren Street?
A. I did.
Q. And made it all one store front?
A. Yes, sir.
139 Q. With the ground floor, and separated the ground floor entirely from that building, from the upstairs?
A. Yes, sir.
Q. Making the upper part of the building part of your hotel?
A. Exactly.
Q. How many rooms did you get out of that?
A. I think there were six or seven rooms on each floor. About forty rooms I think.
Q. How many on each floor in that part of the building that faced Van Buren street?
A. Two.
Q. Two on each floor?
A. Yes, sir.
Q. And the rest of the rooms get their light——
A. From that——
Q. —from that light shaft?
A. Exactly.
Q. All right. That would make some 28 that faced the light shaft?
A. Yes.
Q. Now how many rooms are there for sleeping purposes, I am not talking about parlors, but how many rooms were there in the McCoy Hotel proper, or are there—how many rooms were there there after you made the change in 1892?
A. Well, I forget exactly but I think there is 215 rooms now.
Q. That is with the forty?
A. With the forty, yes, sir.
Q. And that would make approximately 175 rooms in the
140 old part of the hotel?
A. Yes, something like that, yes.
Q. Now, how many rooms are there in that portion of the hotel on Van Buren street, how many on each floor?

A. Well, I think there is forty above the parlor floor, I think there is 31 rooms.
Q. Well, how many rooms do you say there are altogether there in that 170 that face or look out at all on Van Buren street?
A. There are five. There is five in the old part on the second floor.
Q. Yes.
A. They are very large rooms.
Q. The first floor has five and the next you think has seven and the next one seven and then the other three eight apiece?
A. Something like that, yes. Something like that.
Q. Did you at any time sell the fee of what is known as the Jenks property, that 25 feet by 96-77/100 with the building that you bought in 1887?
A. I did.
Q. And Mr. McCoy, you took a lease back——
A. I did.
Q. —did you not?
A. Yes, sir.
Q. For seventy years?
A. For seventy years.

The Court: When did he sell it?
Mr. Walker: I didn't ask him, but he sold it in 1912. I am not asking him the price.

141 Q. You recall that the anniversary—it was to celebrate the anniversary of the discovery of America, which was the 12th of October, 1492, you recall that was the purpose of the Columbian Exposition, do you?
A. I do.
Q. Now it was located in Chicago in 1890, wasn't it?
A. I don't remember the exact date.
Q. And they were putting up the building during 1891 and 1892?
A. I think that is correct.
Q. Yes. After the World's Fair was located in Chicago, Mr. McCoy, there was an advance in rental values of downtown stores. Do you know that in your hotel, wherever the leases had expired, in order to get leases that would carry over during the term of the World's Fair——
A. I haven't any recollection of that.
Q. Well, you made your changes in your hotel for the purpose of taking advantage of the situation during the World's Fair season, didn't you?
A. For the purpose of taking care of the guests we might have, that is true.
Q. Yes, I mean for business advantage. You didn't do it for your health, William—I mean, Mr. McCoy, did you?
A. No, I did it as a matter of business, of course.

142 Q. Well, all right. Well, there was a boom in Chicago during 1891, '2 and '3 and localized here, wasn't there, on account of the World's Fair?

A. There was somewhat of an increase in real estate, yes.

Q. Yes. Now when the World's Fair closed in November, 1893, this market, in its real estate felt the effect of that panic, didn't it?

A. There was a depreciation I think in values.

Q. Yes. In rents, and that panic lasted, did it not——

A. Sir?

Q. —as it affected real estate up to 1898, until after this road was built and put in operation.

A. It affected the outside real estate, I am satisfied of that. I don't know about the downtown real estate.

Q. Do you recall the date or anywhere near the date, or the year in which they put in the columns on Van Buren street for this structure?

A. It must have been about 1896 or 1897.

Mr. Walker:

Q. I suppose, Mr. McCoy, you turned the disposal of those books and papers over to your son?

A. I did partially, yes.

Q. What?

A. I did, yes.

Q. And you don't mean to say that you—were you there when the junkman came or did you just tell your boy to get rid of the stuff?

143 A. That is the circumstance. I told him to get rid of it.

Q. And what there was about that, of course, as to how they were disposed of, you would have to rely upon your son?

A. I would, yes.

Q. Mr. McCoy, do you know what the height of the structure is, from the top of the rail to the grade of the street, what that distance is, approximately?

A. Oh, about eighteen feet, I should think.

Q. Will you tell us, please, about where—These photographs are foreshortened so that I can't tell—at about what part of your building the top of the structure is parallel to or level with.

A. It is in between the ceiling of the stores and the ceiling on the second floor.

Q. Now, the columns are just within the curb of the sidewalk on Van Buren Street?

A. Yes, they extend inside of the curb wall.

Q. Just inside of the curb?

A. Yes, sir.

Q. Now, do you know what the dimensions of those columns are north and south?

A. The size of them?

Q. Yes.

A. Why, that might be——

Q. Twelve or fifteen inches, aren't they?

A. They might be 12 by 16 inches.

Q. Now, how many columns, calling that one at the corner,

144 are there in front of that Van Buren Street property at that depth of 108 feet?

A. I think there are two more.

Q. Now, with the exception of the columns so far as this railroad is concerned, at the very space occupied by the columns that are 15 by—or 12 by 18 or 16——

A. Yes.

Q. —the rest of the sidewalk space of the 13 feet is free?

A. It is.

Q. Now, whereabouts, in reference to the west line of your property, and by that I include the Jenks property, of which you have the lease now, did the platform end?

A. Well, I think it came up pretty close to the Jenks property. It may have come a little east of the west——

Q. I can't find it on these photographs anywhere.

A. I don't know that. I think it came two feet east of the west line.

Q. So that, with the exception then of that two feet where the platforms are, the platform comes out from the main body of the railroad bed which is in the street and extends nearer to the curb and nearer to the building——

A. Yes.

Q. —than the road does at other points?

A. It does.

145 Q. Now, when you go east of that point where the station platform is the railroad road-bed occupies that part of the street directly over the center of the street, doesn't it?

A. I think so.

Q. They weren't there before. You have already testified to that. Now, Mr. McCoy, how many feet would you say from the curb is the railroad structure proper than those girders?

A. Well, I would have to figure it in this way, Mr. Walker. Sixty-six foot street, from the building line and the two sidewalks would give you pretty near where the elevated was.

Q. Now, it is over the center of that 40 feet and occupying about the same space in the center, a little wider, with the space of the car tracks and the space between them that they do occupy on the surface of the street, isn't that right?

A. That is right.

Q. Now, the whole street roadbed, on the street, is entirely open, beneath the structure, the column being on the sidewalk?

A. It is.

Q. None of these columns interfere with the ingress or egress to your property, do they?

A. Not to any great extent, no.

146 Q. The platform that you had reference to that ran a few feet, you say, east of the west line of your west 25 feet, that is the Jenks property, your leasehold——

A. Yes.

Q. —ran further east, the platform, than the stairway?

A. It did, yes.

Q. So that those people that got off the cars that ran east of the stairway would have to go back, to walk downstairs, is that right?

A. They would.

Q. From the station of the elevated railroad right west of your property a stairway comes down, as you say, about 12 or 15 feet west of your west line on the north curb?

A. It may be a little further west or may be a little further east. I am not sure about that distance.

Q. Is there a corresponding stairway across on the north side of Van Buren street, west of La Salle?

A. I think there is. West of La Salle?

Q. Yes, right at the west side of La Salle.

Mr. Walker: At the other end of the platform.

Mr. Mecartney: Is there not a stairway of the station that comes down west?

A. A stairway comes down the other way there, goes north, running along La Salle street.

147 Q. When trains are passing or pulling out on that structure right opposite your premises. Will you tell about how high the tops of the trains are compared with the third story rooms or windows?

The Court: He may answer that.

To which ruling of the Court the defendants by their counsel then and there duly excepted.

A. I do not know the exact height of the trains from the rail up to the top. I do not know that.

Mr. Mecartney: Can you tell whether any portion of the train is in front of the windows?

A. It is my impression that the top of the cars extends up above the floor on the third floor.

148 Plaintiff offered in evidence the above and the following ordinances of the City of Chicago from Vol. 2 Special Ordinance- of the City of Chicago published in 1908.

149 *Ordinance.*

Union Elevated Railroad Company.

October 14, 1895.

Be it Ordained by the City Council of the City of Chicago:

Section 1. That permission and authority be and the same are hereby granted to the Union Elevated Railroad Company to construct and maintain for a period of fifty (50) years from and after the passage of this ordinance, an elevated railroad with such switches, curves, turnouts, connections, supports, columns, girders, telegraphs, telephones and signals, and such other devices as the company may deem necessary for operating its cars, or for the operation of the trains and cars of the respective elevated railroads hereinafter named, or any of them, in, along and upon the route hereinafter named.

Commencing in Wabash avenue at the north line of Lake street, thence running in a southerly direction in and along Wabash avenue to the south line of Harrison street, in said city, with the right to connect the elevated structure and tracks hereby authorized, and operate the same in connection with the elevated railroad structure and tracks now in progress of construction in said Lake street, and also with the right to connect with the structure and tracks of the Chicago and South Side Rapid Transit Railroad Company at any point north of the south line of Harrison street, between Wabash avenue and Fifth avenue.

* * * * * * *

Sec. 3. The permission and authority hereby granted to construct, maintain and operate an elevated railroad in and along Wabash avenue, between said Lake street and Harrison street, as aforesaid, are upon the following conditions:

* * * * * * *

Second. That the elevated railroad hereby authorized in said Wabash avenue, between the points aforesaid, shall be subject to the joint use of the Northwestern Elevated Railroad Company, The Lake Street Elevated Railroad Company, The Metropolitan West Side Elevated Railroad Company, the Chicago and South Side Rapid Transit Railroad Company, and the Union Elevated Railroad Company, upon such terms and conditions as have been agreed upon under any and all contracts now existing between the said corporations last above named, or such contract or contracts as may hereafter be entered into between the said companies, or any of them, for the use and operation of the said railroad hereby authorized.

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150 *Ordinance.*

The Lake Street Elevated Railroad Company.

October 1, 1894.

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Be it Ordained by the City Council of the City of Chicago:

Section 1. That permission be and the same is hereby given and granted to the Lake Street Elevated Railroad Company, a corporation under the laws of the State of Illinois, to construct, maintain and operate for the period of fifty years from and after the passage hereof, an elevated railroad with two (2) tracks, and such curves, side tracks, switches, sidings, turnouts, connections, supports, columns, girders, telegraph, telephone, signal and other devices as the said company may in like manner deem necessary for operating its road along and upon the following route in the City of Chicago, to wit: A line of road connecting at the east line of Market street, extended north with the line of road now constructed and operated by said company on Lake street, thence extending

east upon Lake street to the east line of Wabash avenue, subject, however, to the provisions hereinafter contained.

* * * * * * *

151 *Ordinance.*

Union Consolidated Elevated Railway Company.

June 29, 1896.

Be it Ordained by the City Council of the City of Chicago:

Section 1. That permission and authority be and the same are hereby granted to the Union Consolidated Elevated Railway Company to construct and maintain for the period beginning with the date of the passage of this ordinance and ending fifty years after the seventh day of October, A. D. 1895, an elevated railroad, with such branches, curves, turnouts, connections, supports, columns, girders, telegraphs, telephones and signals, and such other devices as the company may deem necessary for operating its cars, or for the operation of the trains and cars of the respective elevated railroads hereinafter named, or any of them, in, along and upon the following route: Commencing in Van Buren street at its intersection with Wabash avenue, and connecting at that point with the tracks of the Union Elevated Railroad Company in said Wabash avenue, and thence running westerly in and along said Van Buren street, and over and across the bridge and to the tracks of the Metropolitan West Side Elevated Railroad Company in said Van Buren street, at a point about two hundred feet east of Halsted street, and connecting with the tracks of the said The Metropolitan West Side Elevated Railroad Company at that point; and also with a branch commencing at and connecting with the said tracks in said Van Buren street at its intersection with Market street, and thence running northerly in and along said Market street to the right of way of the said The Metropolitan West Side Elevated Railroad Company between said Van Buren street and Jackson street, and connecting with the tracks of the said The Metropolitan West Side Elevated Railroad Company at that point; provided, however, that before making the said two connections with the tracks of the said The Metropolitan West Side Elevated Railroad Company, as above authorized to be made, the said Union Consolidated Elevated
152 Railway Company shall first obtain the written consent of the said The Metropolitan West Side Elevated Railroad Company to make such connection; and also the right to connect the double track herein authorized to be constructed in Van Buren street with the tracks of the Union Elevated Railroad Company in Fifth avenue, for the operation of the loop system; provided, however, permission to make such connection shall be first obtained from the said last named corporation.

* * * * * * *

Sec. 3. The permission and authority hereby granted are upon the following conditions:

First. That two tracks only shall be constructed and operated in and along said Van Buren street, from Wabash avenue to Market street, and in and along Market street to the right of way of The Metropolitan West Side Elevated Railroad Company, between Van Buren street and Jackson street, and that a single track only shall be constructed and operated in said Van Buren street west of the point of connection of said single track with said double track in said Van Buren street at its intersection with Market street.

Second. That that part of the elevated railroad structure hereby authorized between Wabash avenue and Fifth avenue shall be subject to the joint use of the Northwestern Elevated Railroad Company, the Lake Street Elevated Railroad Company, The Metropolitan West Side Elevated Railroad Company, the Chicago and South Side Rapid Transit Railroad Company, and the Union Elevated Railroad Company, upon such terms and conditions as have been agreed upon under any and all contracts now existing between the said corporations last above named, or such contract or contracts as may hereafter be entered into between the said companies or any of them, for the use and operation of the said railroad hereby authorized; and that part of the elevated railroad hereby authorized in Van Buren street west of Fifth avenue, and in Market street, shall be subject to the joint use of the Union Consolidated Elevated Railway Company, the Union Elevated Railroad Company and The Metropolitan West Side Elevated Railroad Company, upon such terms and conditions as have been agreed upon between any or all of the said companies last named under any and all contracts now existing between the said last named corporations, or any two of them, or such contract or contracts as may be hereafter entered into between the said last named companies or any two of them for the use and operation of said railway hereby authorized.

* * * * * * *

153 Fifth. That all columns and supports for the said elevated structure shall be located as follows: For that part of the said elevated structure in said Market street, and also in Van Buren street, east of said Market street, and for that portion of the said elevated structure in said Van Buren street, between Canal street and the west line of the Chicago river, the said columns and supports shall be set and placed on the curb line; and for that part of the said elevated structure in said Van Buren street, west of Market street, the same shall be built in the center of the street and supported by single columns, with the exception, as aforesaid, of that part of said structure between the west line of the Chicago river and Canal street.

Sixth. That the said structure of such elevated railroad shall be made as light and presentable as is compatible with the traffic thereon. Said structure shall be what is known as lattice work construction, the same as the East Lake street extension construction from Market street to Wabash avenue. The elevated structure shall span all cross streets, and no columns or other supports shall be set in the intersection thereof.

Seventh. That the motive power to be used in the operation of said

elevated railroad hereby authorized shall be electricity, or some other motive power equally as clean and noiseless; provided, however, that the said Chicago and South Side Rapid Transit Railroad Company shall have the right to use steam as a motive power for operating its cars and trains for the period of three (3) years from June 24th, 1895, and after the expiration of said three (3) years, the said Chicago and South Side Rapid Transit Railroad Company shall use for its motive power electricity or some other motive power equally clean and noiseless.

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Sec. 10. The consent, permission and authority hereby given are upon the further express condition that the said company shall and will forever indemnify and save harmless the City of Chicago against and from any and all damages of every kind and character, including land and business damages, and any and all damages to property of every kind and character, and from any and all damages, judgments, decrees and costs and expenses of the same, which it may suffer or which may be recovered or obtained against said city for or by reason of the granting of or resulting from the passage of this ordinance, or any matter or thing connected therewith, or with the exercise by said company of any of the privileges hereby granted, or from any act or acts of the said company under or by virtue of the provisions of this ordinance.

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154 *Ordinance.*

Northwestern Elevated Railroad Company.

June 24, 1895.

Be it ordained by the City Council of the City of Chicago:

Section 1. That clause first of Section 1 of an ordinance passed January 8, 1894, granting to the Northwestern Elevated Railroad Company permission and authority to construct and operate an elevated railroad and branches in, upon and along the routes named in said ordinance, be and said clause first is hereby amended so that said clause first, which authorizes the construction of the main line of said railroad, shall read as follows:

First. The route for that portion of the main line of said railroad south of the north line of Institute place in said city, shall be as follows: Beginning at a point on the north line of said Institute place between Market street and North Franklin street, thence running in a southeasterly direction over and across said Institute place to the south line thereof, thence continuing and running in a southeasterly direction over, along and upon any lands which said railroad may acquire by lease, purchase, condemnation or otherwise, and across any alley or public place to the north line of Chicago avenue in said city, and thence continuing and running in a south-

easterly direction over and across said Chicago avenue to North Franklin street, in said city, and thence continuing and running in, along and upon said North Franklin street to the intersection of Michigan street, and thence continuing easterly in, along and upon Michigan street to the intersection of Wells street, and thence southerly in and along Wells street, and over and across the Chicago river, and over and across Wells street bridge and thence continuing southerly in and along Fifth avenue to the north line of Harrison street, in said city; provided, however, that the permission and authority hereby granted to the said Northwestern Elevated Railroad Company as to that portion of the main line above described, located and lying in Fifth avenue between the south line of Lake
155 street and the southern terminus of said main line, are given and granted upon condition that the elevated railroad constructed hereunder in said Fifth avenue, between the points last aforesaid, shall be subject to the joint use of the said Northwestern Elevated Railroad Company, the Lake Street Elevated Railroad Company, the Metropolitan West Side Elevated Railroad Company, the Chicago & South Side Rapid Transit Railroad Company and the Union Elevated Railroad Company, under any and all contracts now existing, or which may hereafter be entered into between the said companies, or any of them, and provided further, that the permission and authority hereby granted as to that portion of the main line of said railroad in said Fifth avenue, lying between the south line of Lake street and the southern terminus of said railroad in Fifth avenue, are given and granted upon the further condition that the said Northwestern Elevated Railroad Company shall enter into a contract with the Union Elevated Railroad Company upon such terms and conditions as may be agreed upon between them, whereby the same shall be leased to, and the said elevated structure to be built in that portion of Fifth avenue between the south line of Lake street and the southern terminus of said line in Fifth avenue shall be constructed and maintained by the said Union Elevated Railroad Company, for the uses and purposes hereinbefore set forth. The route of the remaining or other portion of the main line of said Northwestern Elevated Railroad Company shall begin as now fixed by said ordinance of January 8, 1894, namely, beginning at the same point on the north line of said Institute place, at which the above described route begins, and thence continuing and extending northerly and northwesterly to the city limits.

* * * * * * *

156 HENRY A. KNOTT, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined in chief by Mr. Mecartney and testified as follows:

Q. What is your business?

A. I am in the real estate and loan business and appraisals of property.

Q. How long have you been in the real estate and loan business?

A. About thirty-five years.

Q. Where have you operated during most if not all of that time?

A. I have operated in all parts of the City and suburbs and even in outlying parts to some extent and outlying farming prop-
157 erty in the county.

Q. Mr. Knott, I have not asked you that. I just asked you your connection with the real estate board.

A. I joined the Chicago Real Estate Board in 1888. I was elected treasurer of the organization in 1890. I was elected a member of the valuation committee and served in 1894 and '5; also served on the same committee in 1899 and '90.

Mr. Walker: 1900 you mean?

A. 1900. I was chairman of the valuation committee for one year. I was elected president of the Chicago Real Estate Board in 1898.

Q. Before we get away from the question of valuations, have you had occasion or any experience in making valuations of real estate outside of making valuations for the purpose of your own loans and outside of being a member of the real estate board, the valuation committee?

A. I have. I have valued many millions of dollars of downtown and outlying property as well for capitalists and out of town banks and capitalists in various parts of the country.

Q. Mr. Knott, have you ever,—or do you know the McCoy hotel property at the northwest corner of Van Buren and Clark street in this city?

A. I do.

Q. How long have you been acquainted with that corner
158 and the property in the immediate vicinity?

A. Twenty to twenty-five years, I should say, specially.

Q. Have you had charge of any property at any time in your experience, within several blocks of that property?

A. I have.

Q. Do you recall any at present?

A. I had charge of, for my brother-in-law, Henry S. Osborne, of the Open Board of Trade property, right around the corner, known at one time as Pacific avenue, now La Salle street, opposite the Board of Trade. I sold the leasehold interest of that property to Benjamin I. Greenebaum and others.

Q. Where is that property with reference to the block in which the hotel property is situated?

A. It is in the same block, but it is to the west of La Salle street and then north, to the middle of the block, west front, opposite the Board of Trade.

Q. Are you familiar with the property immediately north of the Van Buren—of the McCoy hotel?

A. Immediately north, yes, sir, the Kaiserhof.

Q. The Kaiserhof property?

A. Yes, sir.

Q. State what your interest is, if any—I am not speaking of financial interest, but what interest there was that drew your attention to that building or property?

A. This property, the Kaiserhof property was a part of
159 the property leased by Frank S. Osborne, from Henry and Albert Keep, that is the piece fronting 100 feet, as I remem-

ber it, on Clark street, the Open Board of Trade—and backing up to the Open Board of Trade piece that fronted on Pacific Avenue, that was a hundred by a hundred and six.

Q. Then the Open Board of Trade piece that you particularly managed was under the same ownership as the Kaiserhof property?

A. Yes, sir. There was no alley between it. They ran right together. They were practically one property.

Q. All right. Now tell us—have you any estimate of the amount of property on the south side of Chicago that—strike that out a moment. Have you had charge of the management, the rental and sale of various other properties in this downtown district, outside of those you mentioned?

A. Yes, sir.

Q. Now, Mr. Knott, confining your attention particularly to the years commencing in 1890, or from 1888, say, down to 1905, had you at that time—or what facilities had you and what facilities did you avail yourself of, if any, to keep track of the values of downtown property. The values of downtown property, the sales and so forth.

Mr. Walker: That is if he did keep track of them. He has not said so.

Mr. Mecartney: Well, I said what did you do? What
160 facilities did you avail yourself of and what did you use?

A. What are those dates?

Q. From 1888 or 1890 down to 1905. Well, I won't include those dates. Say any dates, any date will do, during your experience, what facilities did you have for keeping track, as a real estate man, for keeping track of sales and loans and real estate transactions?

A. Well, I was constantly making appraisals, myself, for loans, I was constantly making appraisals either while a member of the Valuation Committee of the Real Estate Board or being called in, individually to appraise property, and making sales, and the management of property in general. I hadn't any other business. I was at it all the time.

Q. Well, that is your experience now, and I am asking you what facilities had you, how did you keep track of them, in other words, of the market events, respecting downtown real estate?

A. Well, I kept track of all my appraisals. I have the copies, the originals of every appraisal I have ever made, that is, where it was a closed transaction. Of course I made many million dollars' worth of appraisals where nothing came of the transaction to me, as far as being of value, and the loans, I kept my loan registers, every
loan, of course is still—I still have track of, and I still
161 have a copy of it, and I made—of course I kept up with the daily papers and the accounts of sales and the association with real estate men that were handling the same class of property, and doing the same general line of business that I was doing.

Q. Mr. Knott, in the early nineties, and the middle nineties, if I may so term that, during that period, did you have occasion, on

account of the interest which you had in real estate, in downtown real estate, as agent, manager or loan agent, to form judgments from time to time of the values of downtown real estate on different streets?

Q. Did you have occasion to?

A. I did, yes, sir.

Q. Do you remember in particular, the growth of Van Buren street prior to the advent of the elevated loop road, or in general, do you remember it either in particular or in general?

A. I do.

Q. State the character of that street for a few years, or for even say ten years prior to the advent of the loop, from 1897?

A. Along in those years the Steinway Hall property, a modern building, was built, between Wabash and Michigan, facing Van Buren street. The Fisher Building was built at the northeast corner of Van Buren and Dearborn. The Rialto Building was
162 built south of the Board of Trade, fronting on Van Buren. The Monadnock, the south half of the Monadnock was built, fronting on Van Buren, and of course—well, this property, this hotel property was built, but not the size of the others, of either of the others in point of——

Q. Well, was that constructed during the period about which I have asked you, or was that before?

A. That was before, yes, sir.

Q. What building almost facing the north on Van Buren, right east of the Monadnock, a short half block, was constructed, if you know?

A. East of the Monadnock?

Mr. Walker: He named the Fisher Building.

Mr. Mecartney:

Q. East of the Monadnock or facing north on Van Buren.

Mr. Walker: Do you mean the Old Colony?

The Witness: The Old Colony, of course. Yes, it didn't come to me.

Mr. Mecartney:

Q. Do you remember a building at the southwest corner of Pacific avenue and Van Buren—at the southeast corner?

A. That was the Omaha Building.

Q. That was the Omaha Building?

A. Yes, that was the Omaha Building.

Q. Do you remember about the number of stories in the Omaha building?

A. I think it was nine.

Q. How shortly after the opening of the Board of Trade
163 Building was the Rialto *concerned*, or about how near, or have you any estimate in mind as to that time?

A. Why, I am not positive, but my remembrance is that it was built a short time after the present Board of Trade was built.

Q. Do you remember the year in which the present Board of Trade was opened?

A. I am not certain.

Q. Well, when, with reference to being in the eighties, the early eighties, or the late eighties?

A. I think it was about 1888, I am not sure, I might be away off.

Q. Now, with the exception of that building constructed on the Mendel property, and the Omaha Building right across the street from it, is there any modern office building that has been constructed on Van Buren street west of State and east of Fifth avenue that you know of?

A. None that I can think of, no, sir.

Q. When was the Athenaeum Building on Van Buren street, right east of Wabash, constructed, before or after the loop?

A. Before. It is not a high class building though.

Mr. Mecartney: Now, Mr. Knott, before the elevated road started construction in Van Buren street, what, to your observation, recollection and best judgment was the character of that street as a thoroughfare?

164 A. It was becoming a great thoroughfare, similar to Madison street. It had street cars there running away west, and it was—it had every prospect of being a great street.

Mr. Mecartney:

Q. Now what, in a—what was the tendency of the general trade, the south side business further east, on State and Wabash, if you know, and the tendency of values at that time?

A. The tendency of business was southward. The tendency of values was upward.

Q. I don't think I will repeat it. Let it go. What, in your best judgment, was the trend of values in the—so far as territorial direction was concerned in this downtown district, before the loop was constructed?

A. The trend of values was upward in the whole lower—in the whole central business district.

Q. Was there any tendency or any part of that district where values were growing in particular?

A. They were growing particularly on State street and some on Michigan avenue; on Madison street, Adams, Monroe, and some on Jackson, and on Van Buren, all those streets.

Q. Was there at that time any through car line east and west from the south side running directly west between Van Buren—anywhere between Van Buren and Madison street?

Mr. Walker: Now what time are you placing that at?

165 Mr. Mecartney: Prior to the loop construction.

The Witness: Between Van Buren and Madison?

Mr. Mecartney:

Q. Between Van Buren and Madison was there any through car line directly west over the bridges, over the river?

A. I don't know whether the through line on Adams street was established or not. I think it was.

Q. All right. I had forgotten that.

A. I am not sure but I think it was.

Q. I had forgotten that. With that exception was there any ordinary street car line anywhere between Madison and Van Buren?

A. There was not.

Q. Was there at that time a street car line on South Clark street and Wentworth—south Clark street, and its continuation, Wentworth avenue?

A. Yes, sir.

Q. Was there a street car line on Dearborn street running to the Polk street station?

A. I think so, yes, sir.

Mr. Mecartney (continuing question): You have stated in 1893 and 1894, and the early part of 1895, the valuation was about the same. Well, do you remember the dimensions or do you want them given to you?

A. The dimensions of the property was 105 feet on Van Buren street and 95 on Clark.

Q. May I change that, and assume it is 108 on Van
166 Buren?

A. 108, yes, I know that that is right.

Q. One plat gives it as 105, which is incorrect.

A. 108 and 95. I have got my figures accurately here. I have prepared them carefully, and I have read them over——

Mr. Mecartney:

Q. Mr. Knott, to save time, can you—or have you made any figures and calculations as to your opinion, on which you base your opinion as to the value of this leasehold, as of those years, have you made such figures?

A. I have.

The Witness: I figured that the value of the leasehold interest in 1893 and 1894 and the early part of 1895 was $316,666. I figured that the value of the building at the same period, of the McCoy Hotel property, 108 on Van Buren by 95 on Clark, was $115,000. A total of $431,666. I figured that the—do you want me to give the figure on the building, on the other, at the same time?

Q. Go ahead, yes.

A. I figured that the value in 1893, 1894 and the early part of 1895, of the ground, the fee, owned by Mr. McCoy, adjoining the hotel on the west, was $75,000 and the building $40,000, a total of $115,000.

The Court: The building $40,000?

The Witness: Yes, and the total of $115,000 for that piece of property. Making a total of the two properties—the $316,666
167 was the value of the leasehold interest in the year 1895 and the $115,000 is the value of the building and the fee in the—at the same time I know that — the $316,666 is included the $115,000 for the building.

Mr. Burns: Well, you didn't say that.

Mr. Walker: Yes, he does, he says the $316,666 on the entire—includes the building, and the other piece of property is worth $115,000, so that——

The Court: $431,666 is a mistake, is it?

The Witness: $431,666 is the total as I figured it. of both pieces. I had it in the wrong place there.

Q. Mr. Knott, are you prepared to give an estimate of the front foot valuation of the ground that is covered by this leasehold as of the years that you have mentioned, are you prepared to give a front foot valuation of that property?

The Witness: He is asking me now for the front foot valuation of the leasehold interest, not of the fee.

Mr. Mecartney: No, I say of the fee, of the ground.

A. Of the fee, yes. I told you that my valuation at that time was $5,000 a front foot on Van Buren street.

Q. That is for the 108 feet?

A. That is for the 108 feet, $540,000.

168 The Court: Five hundred and what?

The Witness: $540,000 for the lease—for the fee——

Mr. Mecartney: That is the 108 feet.

A. That is the 108 feet in 1893, 1894 and the early part of 1895.

Mr. Knott, have you had occasion to observe the effect of the elevated road, or of elevated roads and their operation upon abutting property?

A. I have.

Q. I believe you have stated that you have had charge of several properties abutting on the elevated railroad, the road in the down-town district?

A. I have.

Q. Have you had your attention directed to the effect of the elevated loop structure, so-called, upon this hotel property, and by that I mean to include the leasehold and the fee on the west?

A. I have.

Q. Are you prepared—in your opinion as a real estate man, has the erection of that structure, for elevated railroad purposes, any effect upon the market value of those premises?

A. I have an opinion, yes, sir.

Q. What is that opinion with reference to it having been benefiting or damaging?

A. It damaged it in my opinion.

169 Q. Can you give us an estimate, based on your opinion, in dollars and cents, or percentages, or otherwise, of the effect on this hotel property, the effect upon the fair cash market value of this hotel property?

A. I can.

Q. What is that estimate?

A. I figured a damage to the leasehold interest and the building of——

Q. Excuse me, but I want to ask you this: I want you to give me, if you can, a conservative and minimum estimate of that damage.

Mr. Mecartney:

Q. Oh, well, give us an estimate, in your opinion, in your own way, whether it is a maximum or a minimum?

A. I figured that on a value of $316,666 for the leasehold interest, the value of the leasehold interest in 1895, and the value of the building upon that leas-hold interest, that foots up $316,666, and the value of the land, the fee, of the Jenks piece, on the west, and the value of the building on that fee, which is $115,000, or a total of $431,666, and I figured that the building of this loop structure and the operating of the trains damaged the property 15 per cent or $83,494.

Mr. Mecartney: I guess you are wrong in your estimate.

170 The Witness: Yes, I think I am wrong on that. Wait a minute.

Mr. Walker: Well, I don't know when he puts in this date.

The Witness: That is $66,249.

Mr. Walker: $66,249?

The Witness: $66,249.

The Court: You may make any correction you wish to make, Mr. Knott.

The Witness: I had started to figure on this blank piece of paper here, and hadn't finished my figures when you permitted me to use this memorandum. I am perfectly clear now on what I want to testify to. I want to testify that that leasehold interest in 1895 was worth $316,666 in my opinion, itself; that the building at that time was worth $115,000, as I first said; that the total value of that property was $431,000.

The Court: That is of the leasehold interest itself.

The Witness: Yes, that is what I said in the first place.

The Court: All right.

The Witness: That is my testimony there. Now I want to testify that in my opinion the value of the fee was $75,000, and the building on it, to the west of the Jenks property, was $40,000, making a total of $115,000. I got those two 115's confused.

171 The Court: Making a total valuation of both leasehold and fee, of what?

The Witness: Making a total valuation of—a total damage to the property of——

Mr. Mecartney: First give us the total valuation, the total valuation of both pieces, Mr. Knott.

Mr. Walker: $546,666, I think. $431,666 plus $115,000.

Mr. Mecartney: That is right.

The Witness: Now this time I want to do my own figuring. $81,999.

Mr. Walker: Oh, no.

The Court: Just a moment. What is the total valuation?

The Witness: I am figuring my damage now, a total of $546,666.
The Court: Yes, that is right.
Mr. Mecartney: That is right.
The Court: The percentage was $81,999?
The Witness: Yes; I thought it was the percentage you were asking for.

Mr. Mecartney:

Q. Have you examined to ascertain where the top of the rails of the loop structure are with reference to the second story windows or rooms on the Van Buren street side of that hotel?
A. I have.
Q. About where do they come?
A. I should think about six feet, the lower part of the
172 structure, I should think is about six feet from the floor, the second floor of the hotel.
Q. With trains passing on that structure——
The Court: Higher or lower, or do you mean it is six feet away?
A. The bottom of the structure is about six feet above the floor level of the second floor.

Mr. Mecartney:

Q. The bottom of the structure, you say, and I am asking you about the top of the rails.
A. The top of the rails, oh, I should think it was—no, I think the top of the rails is about that, yes, sir.
Q. Yes.
A. I won't correct that.
Q. About six feet above the lower floor?
A. Yes, sir.
Q. Above the floor. Now with trains on that structure, about where do the top of the trains come with reference to that story or the ones above?
A. On the floor above.
Q. Yes, go ahead.
A. The extreme bottom of the train, as it goes by, is about five feet above the level of what we might call the third floor, as distinguished from the first, or business floor, the second floor.
Mr. Walker: You mean the store floors, as distinguished from the store floors.
173 The Witness: As distinguished from the store floors.

Mr. Mecartney: I didn't get the answer.

Q. The top of the trains then go where with reference to the third floor, that is the second floor or the third floor?
A. About five feet above the floor level.
Q. Did you make any observations as to the effect of the light upon the premises by the structure or the passing of the trains?
A. Yes, sir. The stores, the store floor and the second and third floors are affected by obstruction to light by the structure and by the passing of the trains. The second floor more than the third.

Q. Is there any special feature of noise of the elevated railroad that is connected with the operation of the station immediately west, any special feature of noise of the elevated railroad, any special feature of noise connected with the station, the starting and stopping of trains immediately west or in front of these premises?

Mr. Walker: That is leading and suggestive but I don't mind.

The Witness: There is some added noise there by the—there is the stopping of the trains, setting of the brakes and so forth.

Q. Mr. Knott, have you examined to any extent the inside
174 of this building in question, the McCoy Hotel property?

A. I have.

Q. What is the general character of the building so far as affecting construction, the style of construction?

A. The construction is—it is a well built building I should judge. There are iron stairways, main stairways or iron stairways. The office of the building is well finished, attractive, the rooms are well finished in woodwork, and well furnished; stores on the first floor all around.

Q. Did you observe the character of the floors with reference to their being either of soft wood or hard wood?

A. I am not positive about that. They were covered with carpets and linoleum largely.

Cross-examination by Mr. Walker:

Q. Now the real estate board is an organization of real estate men who choose to join and whom the body admits to it?

A. Yes, sir.

Q. Is it a mutual organization of real estate men?

A. Yes, sir.

Q. A society?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And in that society they appoint a valuation committee for the purpose of submitting to them the property of—valuation of which has been requested?

175 A. The men are nominated and voted upon at the annual election for that committee.

Q. They run for office?

A. Yes, sir.

Q. Run for the position?

A. Yes, sir.

Q. And are elected by the vote of the organization to that committee?

A. Yes, sir.

Q. They are not an appointed committee by the chairman? They are not appointed a committee by the chairman?

A. No, sir.

Q. And if any person requests a valuation why it is submitted to that committee?

A. Yes, sir.
Q. How many members are there on that committee?
A. Up to within recent years——
Q. I am talking about when you were on the board in 1895?
A. Five, five members.
Q. And in 1899 and 1900?
A. Five.
Q. There were five members?
A. Yes, sir.
Q. What properties did you have in your hands as agent for renting purposes in the territory named between 1891 and 1897?
A. I had the Plymouth Building.
Q. Where is that?
A. On Dearborn, south of Van Buren, west front.
Q. How far south?
A. I don't know exactly.
Q. You don't know where it is?
A. Not exactly.
176 Q. Is it not south of Harrison?
A. I don't think so. I think it is between Van Buren and Harrison.
Q. On which side?
A. It is on the east side of the street, west front.
Q. On which street?
A. On Dearborn.
Q. That is on Dearborn?
A. Yes. I had charge of the Open Board of Trade property from 1903 to 1905. I had charge of the Continental—of the Commercial property at the north portion—we call it the Commercial Hotel property—at the northwest corner of Lake and Dearborn; also the Tremont property diagonally across the street, at the southeast corner. I had that a number of years.
Q. No, I am asking you now about a certain period.
A. It was in that term. It was in that term.
Q. 1891 to 1897?
A. 1891 to 1897, yes, sir. I had charge of the Steinway Hall property during that term.
Q. For whom?
A. For Arthur Orr. I think he acquired before 1907.
Q. I did not ask you about 1907.
A. I thought that was your term.
Q. No, sir: I am asking you 1891 to 1897.
A. Oh, I didn't have charge of any property in there then.
Q. What sale did you take into consideration if any, and where is the property, made by any person that you know of, from
177 the Economist, or any other source, upon which you based your value of 1893, 1894 and 1895 that you gave here?
A. Two sales on Clark street in the middle of the block just a little opposite this property, one to Marks Brothers and one to a man named Frank.
Q. All right. Now where is that property?

A. I think they are just south, as I remember it, of where the Princess Theater now is, the three story stone front building that is in there, that is as I remember it.

Q. At the corner of Jackson and Clark street, the southeast corner, is what is known as the Grace Hotel?

A. Yes, sir.

Q. That is a red brick building?

A. Yes, sir.

Q. Then there is some buildings along in there that are pawn shops, that have pawn shops in them?

A. The Boldenweck comes next, that is 40 feet I think.

Q. Is that part of it?

A. That comes next to the Grace Hotel.

Q. Then there are two or three buildings in there, and then comes this Princess Theater property on the east side of Clark street between Jackson and Van Buren?

A. That is right.

Q. What were the dimensions of these properties, the two sales there, one of them, the one to Marks was what?

A. The Marks property was 24 8/10 by 103.

178 Q. And what was the other?

A. The other was twice that.

Q. Forty-eight and something?

A. Forty-nine and a fraction.

Q. Who was the buyer of the forty-eight feet?

A. A man by the name of Frank.

Q. And who was the buyer of the twenty-four feet?

A. Marks Brothers.

Q. When was the sale made or was it a lease?

A. The sale, both of them were sales.

Q. When?

A. I don't remember exactly without my notes.

Q. Well, what date?

A. I don't remember, I say, exactly, without my notes, except they were in the neighborhood of—I think they were in 1894.

Q. In 1894?

A. I think so.

Q. Do you know who was the broker?

A. I don't.

Q. Or who negotiated the deal on either side?

A. I do not.

Q. Have you any opinion about it as to what the Economist said?

A. I have looked it up a number of times, because I attempted to sell both properties.

Q. Now, have you any opinion except what the Economist said, any information?

A. Yes.

Q. Well, where?

179 A. Well, that is no information at that time as to the sale——

Q. Where did you get it?
A. From my own personal work.
Q. Well, where, you could not guess it, did you go to the records and look at the deeds or the instruments?
A. No, comparisons with other properties and all that.
Q. I want to know about the transactions. You could not get the record of the transactions, or the sale price from comparisons with other property?
A. I don't think I got your question.
Q. Just a minute. My question is, you took that into consideration, Mr. Knott, as a basis for fixing your values in 1894, on this property?
A. Yes.
Q. What was it?
A. I think it was $2,400 a front foot for the ground and $10,000 for the building.
Q. Both pieces?
A. I think they are, both, almost the same price, but I am not sure that that price is exactly right.
Q. All right. Now, Mr. Knott, the cars you say, there was a street car line, a through car line on Van Buren street, running to what point east, before this elevated railroad was put in the street?
A. I think it went to the—as far east as the—between Wabash avenue and Michigan avenue, I think it did.
Q. What was it Western terminus?
A. Western avenue.
180 Q. Western avenue?
A. Yes.
Q. What was its motive power?
A. Why, originally, horses.
Q. Was there ever anything on that street but horses until this elevated railroad was built in the street?
A. I think so. I think a trolley was there. I am not sure.
Q. Do you remember whether there was any trolley in the downtown district on any street before the elevated railroad was constructed?
A. I am not positive.
Q. You are not positive.
A. I am not positive.
Q. Was there any trolleys on any street until they took the cable off of Madison and off of State Street?
A. Probably not.
Q. Wasn't the elevated railroad and the loop built before they discontinued the cables?
A. I am not sure.
Q. All right. What was the motive power on Madison Street?
A. Horses and then the cables.
Q. And then the cables?
A. Yes.

Mr. Walker:

Q. Mr. Knott, suppose there hadn't been any street car
181 at all from Canal Street, south of the river and north of 12th Street, I mean away back there in 1883 or 1884, would that have been a good thing for this property or bad?

A. Bad.

Q. As a matter of fact these values down town here wherever they are largely made by the accessibility by means of transit, aren't they?

A. To a certain extent; yes.

Q. Business, as a rule, follows transit, doesn't it?

A. No, sir, right the reverse. Transit, as a rule, follows business.

Q. Transit follows business?

A. Yes, sir. When there is business transit is demanded and it comes.

Q. That is to say, it is a good thing for Wilson Avenue and 63rd Street and out west on the west side to have the transit that brings all of the people down to the department houses in the center of the city, isn't it?

A. There are no apartment houses in the center of the city that I know of.

Q. Department houses, department stores.

A. Then I didn't get your question.

Q. Department houses, I mean. I didn't say apartments. Departments. It is a good thing, isn't it?

A. What is your question?

182 Q. Isn't it a fact that without transit, that brings everything to the center, the business of this city would have developed in other and different territories to a greater extent, a much larger extent?

A. We need transit, of course; we need good transit to bring the people to the center.

Q. And with that transit it has made this down town center a particular and peculiar district, hasn't it?

A. Yes, sir.

Q. Did the loop add to the transit or transit facilities?

A. It did, yes, sir.

Q. Yes. Was it valuable for that purpose alone?

A. It added to the value of certain properties here, of course.

Q. Yes. What part of it—what feature of it added to the value of certain properties?

A. Why, the bringing of people to the streets that had not the loop, the loop properties here that had not the loop, and where it was built, but the balance of the property on Van Buren Street, for instance, and those other streets, of course it was a benefit to the——

Q. Now, I asked you what was the feature that benefited other properties?

A. Why, the fact that they were near by to rapid transit.

183 Q. Oh, yes, it was the rapid transit.

A. Yes.

Q. It is your opinion, is it, that Jackson street, Jackson Boulevard, was benefited by this loop?
A. Yes, sir.
Q. And Michigan Avenue?
A. Yes.
Q. And State Street?
A. Yes, sir.
Q. And Wabash Avenue—and all the other streets within the district except those streets on which the loop runs——
A. Yes, sir.
Q. Can you give me any idea of how much it increased the value on properties on Jackson Boulevard?
A. In the way of percentage?
Q. Yes.
A. I would not undertake to estimate that in that way.
Q. Which did it benefit more, Jackson Boulevard or Madison Street?
A. That would be impossible of figuring or estimating.
Q. La Salle or Clark or Madison?
A. That would be impossible to figure.
Q. Was there any difference in the benefits that it conferred at Jackson Street as distinguished from Adams or Monroe?
A. Why, I could not figure that. That would be impossible.
184 Q. Well, was there any distinction, in your opinion, in benefits that it conferred on those streets as distinguished, on Jackson, as distinguished from those further North?
A. It was a benefit to all of the property that did not face upon the loop, in my opinion, all of the down town property.
Q. Well, I say, which did it benefit more?
A. I should say State Street more than any other on account of the class of business that is done there.
Q. How about Michigan Avenue?
A. Well, it did not benefit Michigan Avenue to anything like the extent that it did State Street?
Q. Well, how about Jackson?
A. The same way, it did not benefit Jackson to the extent that it benefited State Street.
Q. Is it because State Street is the large retail street?
A. Yes, sir.
Q. As a rule, does the number of people that pass a given point during the business hours of the day have anything to do with the value of property at that point?
A. Yes, sir.
Q. The more people that pass a given point the more benefit, isn't that right?
A. Yes, sir.
Q. Yes. So far as this elevated railroad is concerned,
185 more of the people get off at Van Buren and La Salle or Dearborn Street pass this property, do they not, than do the property on State Street?
A. What is that question?

Q. More of the people that get off of this elevated road at the La Salle Street station and at Dearborn Street station pass this property more than they do at the State Street property?

A. Well, it depends entirely on where they are going. If they are going shopping on State Street, no.

Q. I say, those people that get off at that point——

A. Not necessarily.

Q. —at La Salle Street——

A. Not necessarily.

Q. If they go west they go west of State Street?

A. Yes, that is right.

Q. If they went east they would have to pass this point, wouldn't they?

A. They wouldn't need to get off there then.

Q. I am asking about those that got off at this station.

A. Yes.

Q. More of them are brought there so that they get to this given point than are brought to State Street?

A. Yes; but the great bulk of them are carried by.

Q. I am talking about those that get off there, those that get off at the La Salle Street station, which property is benefited
186 most, the corner of Clark and Van Buren or State and Madison.

A. I should say Clark and Van Buren.

Q. Yes. Now, Mr. Knott, which is the better side of Van Buren Street, the north or the south side?

A. Why, I shouldn't think there was any particular difference.

Q. In values?

A. Well,——

Q. I am talking now away back in the nin-ties.

A. The north side of the street.

Q. 1897.

A. I think the north side of the street was the most valuable.

Q. Yes.

A. Nearer the center.

Q. With the exception of the depot building that was built since the road was there—it is only with the exception of the depot building that was built since the road was there, however, but with the station at the Old Colony Building—the Old Colony Building is the only building on Van Buren Street that was built on the south side of Van Buren that is modern in improvement up to or before this elevated railroad was built, isn't it?

A. The Fisher Building.

Q. Well, that is on the north side. I am talking about the south side.

187 A. Oh, yes.

Q. The Old Colony Building, wasn't it the only one?

A. I think so.

Q. Yes. Now, Mr. Knott, in making up your values that you gave after the loop was put in operation, did you take into consideration the transit facilities that this railroad afforded to this property?

A. I did.
Q. Was that a benefit, that facility?
A. Somewhat, but almost impossible to estimate.

Mr. Walker: I move "Almost impossible to estimate" be stricken out.
Mr. Mecartney: I think it is germane.
Mr. Walker: I asked him was that a benefit and he said "yes, somewhat," and then he adds "almost impossible to estimate."
Mr. McCartney: Whether it is or not.
The Court: One moment. What was the question?
Mr. Walker: Do you mean to say it is impossible for you to estimate whether the transit given to this property and bringing people there and taking them there and those that went by on this road, do you say that it is impossible for you to say whether, in your opinion, that was beneficial?

Mr. Mecartney: Objected to for this reason, it should, if
188 anything, be confined to the question of the travel which the loop brought over and the travel which the pre-existing systems furnished.
Mr. Walker: I am talking about the loop and nothing else.
Mr. Cecartney: The loop alone.
The Court: That is what I understand he is talking about.

Mr. Walker: My question is limited to this loop.
The Witness: I think it was a benefit, yes.

Mr. Walker:

Q. You haven't any doubt on that subject, have you?
A. Well, somewhat, not in as great—I can't separate it from the damages.
Q. I haven't asked you anything about separating anything. I am asking you whether you think the feature of transit brought to this property by the elevated railroad was beneficial to this property or not.
A. It may have benefited it somewhat.
Q. Yes. And you mean by that that it was beneficial to its market value, don't you?
A. Somewhat.
Q. Yes. In giving your figures of damages that you gave here, did you take into consideration that benefit?
A. I did.
Q. How much did you allow for it?

A. I didn't allow anything specifically.
189 Q. You didn't allow anything?
A. Nothing specifically.
Q. In dollars and cents.
A. I didn't figure it out in dollars and cents.
Q. You didn't figure it out at all?
A. Yes, I tried to.
Q. Well, tell me your method by which you figured out the benefits so as to make the damage $81,000?

A. I considered it absolutely impossible to figure the benefit that would accrue to this particular piece of property in dollars and cents from the few people that would go by there to the great—as compared with the great number that would be carried overhead and the noise and all that sort of thing, as more than counter-balanced it, much more.

Q. Then you did not give any credit at all to the transit that went by?

A. Practically none. I thought it was very——

Q. Practically none?

A. Practically none. I think it was over-balanced.

Q. Now, you did not——

Mr. Mecartney: One moment. Let him finish his answer.

Mr. Walker: There is nothing further to say and I don't think the former question called for——

The Court: That is right.

Mr. Mecartney: Exception.

190 Mr. Walker:

Q. Then you haven't allowed anything in your figures for that beneficial effect of this road.

A. Yes, sir, I have.

Q. How much.

A. I can't figure it; I can't separate it.

Q. If you can't tell me how much you allowed how do you know that you allowed anything?

A. I felt that it must.

Q. How do you know that you allowed anything, that is my question.

Mr. Mecartney: I object.

The Court: He may answer.

Mr. Walker: I didn't ask about your feelings.

A. I did allow something.

Q. If you can't tell me how much you allowed how do you know that you allowed anything?

A. Well, I felt that the travel——

Q. No.

A. The people going by the property——

Q. Oh, I withdraw the question. I am asking you now, and that is the question,—I am not asking you how you felt, or anything, that is the question, if you can't tell me what you allowed how do you know that you allowed anything.

A. I can't without an explanation, I can't answer the question.

Q. Did you allow anything?

A. Yes.

Q. How much?

A. I can't tell you without an explanation.

191 Q. Well, if you hadn't allowed anything—No, I withdraw that. Were you told not to consider travel benefits in this case?

A. Not told.
Q. By anybody?
A. Not told; no. That is, the question was discussed, of course, but not told not to.
Q. Mr. Knott, do you know what time the World's Fair was located in Chicago?
A. Do you mean what time it was held?
Q. No. I know what time it was held. It was opened, wasn't it, the 12th of October, the first time, by Mr. Harrison, in 1892, and then a dedication, and then they worked on until the first of May, 1893, when they had another opening, the general opening, when Mr. Cleveland was president, and then the Fair ran from May 1st, 1893, to the first of November, 1893, is that right?
A. Yes, sir.
Q. Yes. Now, it was located a couple of years, in Chicago, wasn't it, at Jackson Park, before they began the work upon the ground?
A. Yes, sir?
Q. What?
A. Yes, sir.
Q. It was located along and known to be here about 1891?
A. About 1891.
Q. Now, Mr. Knott, you were not renting any down town buildings at that time, were you?
A. No, sir.
192 Q. And had no charge of it, of any?
A. No, sir.
Q. Don't you know that the rentals in down town property or through the city, where the leases expired and were renewed in 1891 were at a higher, a special rate, where there were one, two and three year leases for that period than at any other time up to that time?
A. I don't think there was very much difference. Property was generally well held. I don't think the World's Fair had so much to do with the down town property.
Q. I am not asking about the World's Fair. I am asking you if you don't know, as a real estate man, that from 1891 to 1894, where one, two and three year term leases were made, they were made at a higher rental than they were before, don't you know that, as a real estate man?
A. Some; not a great deal.
Q. I didn't ask you that. Don't you know that as a real estate man?

Mr. Mecartney: I think the answer is germane.
The Court: The question can be answered by yes or no, and that is what he called for. This is cross-examination.
Mr. Walker: Yes. That is what I called for.
The Court: He is entitled to a categorical answer, if there can be one made.
Mr. Mecartney: I take an exception.

Mr. Walker:

Q. I asked you if you don't know, as a real estate
193 man, as a matter of fact, that leases made in that period, in down town property, stores and leaseholds upstairs and downstairs, were made at a higher rate than those previous to that time, an advanced rate, as a general thing?

A. Somewhat.

Q. All right. Now, Mr. Knott, do you not know, as a real estate man and from observation that the down town stores and office buildings were filled with tenants during that same period?

A. I think they were, yes, sir.

Q. All right. Now, after the World's Fair was closed did the panic then reach Chicago?

A. Yes, sir.

Q. Was that a general panic throughout the country?

A. Yes, sir.

Q. And did it affect rentals in Chicago?

A. It did.

Q. It did?

A. Yes, sir.

Q. Did it affect occupancies in Chicago?

A. It did.

Q. The buildings that had—I mean, now, that was built in Chicago—No, I withdraw that. The panic really began at the time of the Barring Brothers' failure in London, didn't it?

A. I think so; yes, sir.

Q. And that was about in 1890, but we didn't begin to feel the effect of it on account of the boom of the World's Fair until after the World's Fair was closed in Chicago, am I right about that?

A. I think the general country felt it—I don't think the
194 general country felt it until that time.

Q. Yes. Now, after the World's Fair was closed, the market in the city of Chicago was substantially dead, wasn't it?

A. Except for—It was, quite.

Q. In the down town district?

A. In the down town district.

Q. No sales or long term leases, were there?

A. It was quite dead.

Q. And that condition existed and there was no change until the revival, until 1899, and then it began to get better.

A. 1898?

Q. Well, some time in the latter part of 1898 it began to get better but slowly.

A. Yes, sir.

Q. There was not a complete revival, was there, until 1902, was there?

A. Well, it increased right along.

Q. Well, in 1902 it was getting good, wasn't it?

A. Yes.

Q. Name me one sale that you checked up on Van Buren Street.

A. Well, I checked up the sale, to begin with, the McCoy sale—

Q. I don't mean this property—Well, take the McCoy sale. What did you check up there?

A. I checked up the price that he paid for it when he purchased it.

195 Q. How much did he pay for it?

A. He paid $100,000 for it.

Q. For what?

A. For the ground and the building.

Q. Which ground and building?

A. The 25 by 95.

Q. What did you check up on the land and building?

A. I checked up the lease, the original lease, of course.

Q. How much was it?

A. It was $7,000 a year for the first ten years and $8,000 afterwards, until the end of the term.

Q. All right. What lease did you check up?

A. I checked up the——

Q. On this property.

A. To prove my own figures, the Swift valuation on these properties, both of them, and they coincided very closely.

Q. What?

A. I say I considered the Swift valuation.

Q. I have not asked you anything about Swift's valuation.

A. I checked it up by the Swift's commissions valuation as well, and I checked my own figures and they corresponded very closely.

Q. When was that Swift valuation?

A. In 1896, published in 1896.

Q. What was the Swift check, how much, in 1896? That was when they built the road. What was it?

A. The value of the——

Q. Yes.

A. The value of the property was figured, the value of the fee was figured at $564,000.

196 Q. Did you take into consideration or make any inquiry of Mr. McCoy as to what the rentals of his premises were, of the stores down stairs, from 1897, 1898, 1899 and up to 1902, 1903, 1904 and 1905?

A. I did not.

Q. Afterwards?

A. I did not.

Q. If you found that the rent increased immediately after the road was put in operation from ten to twenty to fifty per cent. in each lease, would it make any difference with your estimate of whether this road damaged the property or not?

A. No, sir, not the slightest.

Q. Supposing that happened right in the panic in 1897.

A. It wouldn't make any difference to me.

Q. Not at all?

A. Not a particle.

Q. This was a property that produced—that is to say, a property that produced more income after an improvement has been made,

is worth less than it was before, if the improvement is an elevated railroad, is it?

A. No.

Q. What?

A. Not ordinarily that wouldn't be the case. I would want to know the reason of these rents, and so forth, and it is impossible to say that the building of an elevated loop there increased the value of these stores, and I don't believe it.

Q. Well, is it impossible to say that it was not, if they
197 were increased?

A. I would want to know the truth of all of it.

Q. I am assuming that the rental was increased. Why don't you give the road the benefit of the increase?

A. Because it doesn't belong to it.

Q. What does it belong to?

A. It certainly doesn't belong to them.

Q. What does it belong to if no other condition arose? Take the World's Fair period and you got a higher rental ordinarily, but in this case not. Then take the panic, and between the two comes the elevated railroad, and then after the elevated railroad is built, this property rents its fullest, fifteen, twenty and thirty and more per cent., more, clear up to 1905. What do you attribute it to?

A. I would want to know all about it before I could answer that question.

Q. I am asking you to take that fact and consider nothing else.

A. I could not answer it. It is impossible to answer it. There is no reason for it at all.

Q. Assume there was no change in other conditions, except the market value—the market being in one case the World's Fair market, and in the other the panic, and the only change was the building of this loop in the highway and the dumping of the passengers there and that was all there was to it. What would
198 you say was the effect?

A. I would say with my experience, that my experience tells me that other streets, on Wabash and La Salle, that it went away down, that it stood idle, and all that, and that there was some other reason for it than the building of the elevated loop in front of it.

Q. You say rents went down on Wabash Avenue during the panic?

A. Yes, sir, I do. You know that.

Q. Oh, I know all about it, but I understand from you, I understood heretofore that the panic did not affect this property at all.

A. It affected the vacant stores. I have testified that it did.

Q. Which do you lay it on, the panic, on Wabash Avenue, or the loop?

A. I lay it on the loop.

Q. That is because the land went down there, the rent?

A. Very largely.

Q. Well, after it was carved out, then it was a separate and distinct piece as independent of both corners, wouldn't it, in another

owner, which was no part of either corner but laying in the middle there, 25 by 96 77/100, in a distinct ownership?

A. Yes, sir.

Q. Then if La Salle street was as good as Clark and the Clark street lots were only 108 feet while the La Salle street lots
199 was 105, as the full lot was, assuming that why wasn't that just as valuable then to the 105 feet as it was to the 108 when it was carved out of it?

A. Why? Because it was more valuable to Mr. McCoy, and he paid a very high price to acquire it. He wanted to add it to his property.

Q. Then he paid a very high price for it because it could be utilized as a part of the corner on Clark street?

A. Yes, sir.

Q. Then that price represents the value to McCoy and not the normal value of the property in the open market?

A. When he bought it?

Q. Yes.

A. Yes, sir.

Q. Yes, to McCoy.

A. Yes, sir.

Q. Now, how much was it worth in your opinion as a separate piece not to be attached to either the corner of La Salle street or Clark street?

Mr. Mecartney: When?

Mr. Walker: When McCoy got it.

A. I should say about $1800 a front foot for the ground, and about anywhere from 35 to $40,000 for the building.

Mr. Walker: All right. I asked you why if the building was worth only 35 to $40,000 in 1887, eight years afterwards in 1895 it was worth $40,000, the building?

200 A. The building, as I remember it, the building had advanced somewhat in cost, and we find in figuring a piece of property of that kind where it is advantageously occupied and a going concern, is a little higher than we would figure it otherwise. I do not think there is any great difference between the value of the building at one time and the other. We might put it a little higher than $40,000.

Q. When you gave the value of $40,000 as the value of that building in 1895 did you give it as the value for hotel purposes or uses, or a building in the market without the value of the land?

A. I gave it as a building for hotel purposes and uses, largely.

Q. The Fisher Building is on the northeast corner of Dearborn and Van Buren and the southwest corner of Plymouth place and Van Buren.

A. That is right.

Mr. Walker: The northwest corner of Plymouth and Van Buren and the northeast corner of Plymouth and Dearborn?

A. Yes, sir.

Q. Between Plymouth place and State street?

A. It is on the northeast corner of Van Buren and Plymouth place.

Q. Yes, I understand it is the corner you have designated, but it runs east toward State street, it runs towards State street?

201 A. Yes.

Q. Any you say that was sold?

A. That was sold in April 27th, 1896, apparently for $25,000. I should think that if it was a bona fide sale, it would show a great depreciation after the starting of the building of the elevated structure. I am unable to know whether that——

Mr. Walker: Didn't it sell for $75,000 in 1903, the same strip that sold for $25,000 before the road was put in operation?

A. Not to my knowledge.

Q. Didn't it, in 1897?

A. My notes show this: If you will listen to them I will tell you what they are.

Q. Let me give you the sale. Walker H. Lee, vendor, to William Eisendrath, November 27, 1907, $75,000. Did you look that up?

Mr. Mecartney: I object to counsel reading from any prepared memorandum of his own, trying to get before the jury evidence of sales which I insist is not competent, even though the Court should bring the inquiry down to this particular property in 1895. I want to be prepared to argue and am ready to argue to your Honor that sales of other property more than two or three degrees removed——

The Court: The only question is this: This witness volunteered a statement with reference to depreciation and he said it was

202 due, as he thinks, to the elevated railroad. I think in view of that statement he has a right to go into the sales.

Mr. Mecartney: I do not feel that the witness ought to bind me by a volunteered statement, and I ask——

The Court: No.

Mr. Mecartney: I ask the statement be stricken out, and I object to this line of cross examination.

Mr. Walker: They make it and then ask to strike it out.

The Court: No.

Mr. Walker: Just a moment, your Honor. I asked this witness——

The Court: Understand the entire situation. You may answer.

Mr. Mecartney: Exception.

Q. Didn't you say Plymouth place, the Plymouth place corner was worth more in 1895 than the inside property in this 25 foot strip?

A. Yes, sir.

Q. It was worth just as much, wasn't it, a front foot on Van Buren street, as any front foot area of McCoy's owing to its proximity to State street, within the Clark street front?

A. No, I would not say it was.

Q. You think the Clark street front was more valuable?

A. No, I think the whole corner there, being on two thor-

203 oughfares, that the Clark street corner was more valuable than Plymouth place, and although this was nearer to State street

Mr. Walker: Do you want to stand on the proposition that that 25 feet in 1895—

Mr. Mecartney: 1895.

Mr. Walker: 1895, was worth just as much alone and not connected with McCoy's hotel as it was connected with the corner itself?

A. It was worth $3,000 a foot in my opinion, as I have testified to already.

Mr. Walker: Where did you get your basis, please, for $5,000 a foot on Van Buren street before that road went in at any time, what sale?

A. No sale.

Q. What lease?

A. No lease.

Q. What on earth, please tell me.

A. My own experience and the Swift commission valuation.

Q. When did you—your own experience and what else?

A. And the Swift commission that valued it at even higher than that.

Q. In 1895?

A. The Swift commission in 1895, no, but I got from the fact that there was very little difference between 1893 and 1894 and 1895 and the date that the Swift commission came out. Their valuations were made in 1895.

Q. When did they come out?

204 A. They came out in April, I think, 1896, prepared by three of the ablest men that we ever had in the business.

Mr. Walker: No, I asked him what one, if there was any, that he based the $5,000 a foot on.

A. I will give you a number if you will give me a chance.

Q. Go ahead.

A. The sale to William R. Page and brothers, that is the sale of the property, William R. Page & Bros. to Stummer, Rosenthal & Eckstein, and the property was at 189 Clark street. My management and agency of the property known as the Open Board of Trade——

Q. What was the front foot sale price of the property on Clark street?

A. I don't know, on Clark street.

Q. Well, the one you sold to Stummer, Rosenthal & Eckstein, what was the front foot price?

A. On Clark street?

Q. Yes, sir, at Jackson?

A. That was $5,937.50.

Q. At the corner of Jackson and Clark and the frontage was on Clark street?

A. No, not at all. It is immediately south of the Rector Building.

Q. Jackson and Clark?

A. Yes—no, no, Jackson and Clark, not Jackson and Clark, Monroe and Clark.

Q. Oh, Monroe and Clark, all right. I got the corner wrong. It

is Monroe and Clark. What was the price of that leasehold a
205 front foot, what was the rental and the front foot value?

A. The sale of the leasehold was $315,000, $40,000 for the building, 100 feet, and $2750 per front foot for the leasehold interest.

Q. How much?

A. $2750 for the leasehold interest.

Q. How did you figure it to make that $5,000 a front foot?

A. I figured to make this other property $5,000 a front foot.

Q. Well, tell us how that justifies $5,000 for this piece?

A. Here is a sale, a bona fide sale of the leasehold interest for $315,000——

Q. Well, how does that justify——

Mr. Mecartney: Wait until he finishes his answer.

The Witness: $40,000 of which was considered as of the value of the building, although it cost a great deal more money, of course. I figured that, deducting the $40,000 from the $315,000 and it gives me my $275,000 which is just $2750 a front foot for the leasehold interest on La Salle street. I took that into consideration. It had a great deal to do with all that property in that neighborhood there.

Mr. Walker: What year was that?

A. That was in 1895.

Q. Now, Mr. Knott, what was that property worth in 1906, per front foot?

206 Mr. Mecartney: I object to that, 1906.

Mr. Walker: Oh, I mean 1896.

A. What date?

Q. Oh, any date in 1896.

A. Well, I should say that—in 1896?

Q. Yes. Do you mean to say that the value went down in reality at any time?

A. I can say that the property was worth less in my opinion, and after the operation of the loop, than it was before, decidely so.

Q. Has that ground at any time been worth any less than it was in 1893 and 1894, ever?

A. Yes, sir.

Q. When, the date now, or the year, the time?

A. At the beginning,—at the completion of the road, and the operation of the road, the loop, at that period, in the fall of 1897.

Q. The loop went into operation in October, 1897.

A. The loop went into operation in October, 1897, yes.

Q. Yes.

A. Yes. Then it would be my date that it was worth very materially less than it was.

Q. That is the 15 per cent.

A. Yes, sir.

Q. That is the 15 per cent. in the market, it would sell for 15 per cent. less?

A. Yes, sir, that is my opinion.
207 Q. Land and buildings, than it was before?
A. Yes, that is my opinion.
Q. What was it worth in 1898, that is the year after the road was in operation?
A. There was no particular change.
Q. In 1899?
A. It was worth a little more.
Q. How much more was it worth, was it worth the 15 per cent. more?
A. No, sir.
Q. How much in 1899?
A. Oh, a small per cent. I could not give it exactly.
Q. Can you give me——
A. In 1899——
Q. What was it worth a front foot?
A. Possibly, oh, three or four per cent. more than—it would be almost impossible to figure it out just that way.
Q. As I understand you, your basis of your $81,999, as a damage or as a detriment was based on the 15 per cent. of the amount that you said McCoy had in it, $316,666 and $115,000 for the building?
A. And the other property as well.
Mr. Mecartney: The Jenks property.
Mr. Walker: Yes.
A. Fifteen per cent. of that, that made my $81,000.
Q. $81,999, substantially $82,000?
A. Yes, sir.
208 Q. Now did it all increase alike, three or four per cent?
A. I think so, yes, sir, generally.
Q. What was it worth in 1900?
A. A little more.
Q. How much more than it was in 1899?
A. Maybe up to five or six per cent.
Q. How much in 1901?
A. Oh, a little more right along.
Q. How much?
A. Oh, I would not undertake to figure out the percentage carefully now.
Q. Did it increase as much in 1891 as it did in 1900?
A. There was a little increase all along.
Q. Was it in existence in 1897?
A. Things were quiet.
Q. Was it in existence in 1898?
A. About the same, very little difference.
Q. And then after 1898 things began to boom, did they?
A. Yes, sir.
Q. And in 1898 this property increased three or four per cent?
A. Yes, sir.
Mr. Walker: How much in 1900?
A. Oh, I should think maybe two or three per cent. more.
Q. How much in 1901?

A. A little more.
Q. How much in percentage?

Mr. Mecartney: One moment. I want to preserve my record, your Honor. I object to all questions of values of the property, after all the roads were put in operation, and all the different conditions, market conditions, of necessity, entering into its market value, and on the ground that it could by no means be separated, no one would be able to separate it.

209

The Court: Objection overruled.

Mr. Walker:

Q. 1901 how many per cent. what percentage?
A. Do I have to answer that?

The Court: Yes.

Mr. Walker: Three or four?
A. Not as much as that. I don't think it had already begun to get——
Q. How much more in percentage?
A. Let's see. This is 1901 you are asking.
Q. Yes.
A. Oh, possibly as much more, that would be two or three per cent.
Q. Yes. How much in 1902?

Mr. Mecartney: I will save my record on all these questions, Mr. Walker.
Mr. Walker: Surely.

Q. How much, giving the percentage, that is all, in 1902?
A. Why, I should think it advanced up to that time, maybe ten per cent.
Q. All right. Now in——
A. There was——
Q. I understand. That is ten per cent. for those years up to 1902?

A. Yes.

210

Q. How much did it go on in 1903, 1904 and 1905, ten per cent. more?
A. I should think it got up about another five per cent. by 1905.
Q. Yes. How much has it increased from that time on in percentage?

Mr. Mecartney: Wait. I object to that now. I object there and I insist on the objection. I have objected, your Honor——
Mr. Walker: I asked him—he got down to 1905, in which he said it increased 15 per cent., 5 per cent. in the other two years, and I asked him now if that same proportion was carried on in the increase up to the present time.
Mr. Mecartney: That I object to.
The Court: Objection sustained.

Mr. Walker: Now just a minute. I know your Honor has put the limit on 1905——

The Court: Yes, and I have told you that you might show that there has been an increase, if there has been, or if it did not recede—I told you you might do that.

Mr. Walker: All right. I understand.

Q. Now, since 1897 and 1898, has there been at any time any decrease in the value of that property?

A. No, sir.

Q. Has there been a continual increase in the value of that property?

211 A. No, sir.

Q. Has there been a continual increase in the value of that property up to the present time?

The Court: You may have the benefit of your exception, I mean for the record, Mr. Mecartney.

Mr. Mecartney: Yes, your Honor.

Mr. Walker: Yes.

The Witness: I think there has been a slight increase right along.

Q. All right. Now, Mr. Knott, isn't it a fact, that the difference in values for the years 1898 and 1897 was general and applied to all properties within the loop as well as——

A. It is not a fact.

Q. And due alone to the panic?

A. It is not.

Q. Now, Mr. Knott, you put that building, the value in 1895, didn't you, at $115,000, to get at your figure before?

A. Yes, sir.

Q. Well, I don't want to take too much time to recall your evidence, but last week when we went over this same subject you said that the building was old and not modern in construction, but that it was a good building for its class and kind, but as far as you knew it was mill construction and not a modern building, that's right, ain't it?

212 A. Yes, sir.

Q. Would you have improved that property with that class and kind of a building at that date?

A. No, sir.

Q. And if that ground had been vacant upon that date, 1895, that would have been an improper improvement to have built there, wouldn't it?

A. Yes, sir.

Q. Then it was not valuable to the ground, was it?

A. Yes, it was decidedly so.

Q. It was valuable to carry it for the owner, but it was not the right kind of an improvement to put on it at that time, was it? Do you mean to tell me, bearing that in mind, that the cost of material, figured by the cubic foot, that that is a proper method to get at the value of such a building on such a piece of ground in 1895?

A. Yes, decidedly so.
Q. You do?
A. Yes, sir.
Q. Mr. Knott, you had a building about the same age, or there was a building of about the same age on the Open Board of Trade property? Didn't you?
A. Yes, sir.
Q. And it was sold in 1905?
A. Yes, sir.
Q. It was 100 front on La Salle by 96 or 97 in depth and covered the whole property and there was an eight story or nine story building on it, wasn't there?

A. Yes, sir—no, as I remember it, it was a seven story
213 building.

Q. All right, it was the same height as the McCoy hotel, and a better building than McCoy's, wasn't it?
A. Somewhat. Not much. Not any better finish, just about the same.
Q. Wasn't it worth as much per cubic foot as McCoy's was at the same date?
A. No, it was not.
Mr. Walker: What date did you take, McCoy's?
A. I took McCoy's in 1895, but this building was not worth as much, nor was it as serviceable or usable a building as the McCoy Building and nothing like it. There was no comparison.
Q. I am not asking about that.
A. I can't answer it in any other way. That was a hotel.
Q. You took out $115,000 or added $115,000 to this property for McCoy's building, would you have added $150,000 as the value of the other building if that had been the lot in question?

Mr. Mecartney: I object to that.
The Court: He may answer.
Mr. Mecartney: Exception. It means the trying of collateral issues here.
The Court: Oh, no, not at all.
The Witness: May I answer?
The Court: You may answer.

214 The Witness: I don't know as I got the question. I don't think I have got the question.
Mr. Mecartney: Read it.

Mr. Walker: I say, wouldn't you have called that building, if that had been the building on the ground, under your method of calculation, wouldn't you have figured about $150,000 instead of $115,000?
A. No, sir.
Q. Would you figure more than $115,000?
A. No, not in its damaged——
The Court: That is if it were placed on the McCoy property.
The Witness: Yes, if the open Board of Trade building were——
Mr. Walker: An office building.

The Witness: An office building of its character, I would not have figured it as high as a hotel building if it were placed right on this ground.

Mr. Walker: Wouldn't an office building of that character on McCoy's ground — been as valuable and as much up-to-date as McCoy's building on his ground was?

A. No, sir, nothing like it.

Q Do you mean that that corner was not right for an office building?

A. I mean that it was not right for an office building of
215 that character.

Redirect examination by Mr. Mecartney:

Mr. Mecartney: Now, whether this leasehold be worth—assuming that this leasehold on this property was not worth within $100,000 of what you estimated it at, would it make any difference, and if so what difference would it make in your estimate of the percentage of damage?

Mr. Walker: That's objected to now—if he has made a blunder——

The Court: He may answer.

The Witness: It would not.

Mr. Walker: I save an exception.

Mr. Mecartney: Whether this entire property was worth $500,000 in 1895 or $600,000 or $700,000, would that fact make any substantial difference in your estimate of damage and if so how much?

Mr. Walker: Objected to.

The Court: Well, he has just answered it.

Mr. Mecartney: In the percentage I mean.

The Witness: Fifteen per cent. just the same.

The Court: Just a moment.

Mr. Walker: I move that that be stricken out.

The Court: That may be stricken out.

216 Recross-examination by Mr. Walker:

Q. You have testified—I will take his method now—you have testified that if this property was worth $100,000 less than—if the jury should come to the conclusion that it was from somebody else's evidence, that this was worth $100,000 less than your figures, then still the damage would be 15 per cent. if that right? Do you want to stand on that?

A. I stand on the fifteen per cent. damage whatever the property might be worth.

Q. That is if it was worth $50,000?

A. Yes, sir.

Q. How much do you think your testimony would be on the

question of damages, your opinion on damages, if your values are three times as much as the real value——

Mr. Mecartney: Objected to.

The Court: Objection sustained.

Mr. Walker:

Q. Mr. Knott, if your opinion is wrong as to the value of the property, $100,000 wrong or $200,000 wrong or $300,000 wrong, upon what basis do you say that your opinion of percentage of damage is right?

Mr. Mecartney: Objected to.

The Court: He may answer that.

217 Mr. Mecartney: As argument.

The Witness: I figure that I can't be far out, of course, then can't be much difference.

Mr. Walker: If your opinion of values is one, two or three hundred thousand dollars out of the way, upon what basis do you say that your opinion of value is not the same degree out of the way?

Mr. Mecartney: I object to it.

Mr. Walker: You, yourself——

The Court: If he so maintains.

Mr. Walker: Yes, if he so maintains.

The Witness: I can't answer that question. That seems so absurd to me that I can't answer it at all.

FRANK V. NEWELL, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined in chief by Mr. Mecartney and testified as follows:

Q. What is your business?

A. Architect.

Q. How long have you been in the architect business?

A. Since 1886.

Q. How old are you?

A. 47.

Q. Where are you operating as an architect, in what vicinity during most of your career have you operated?

A. In most all cities of the United States.

218 Q. What is your specialty if any?

A. Hotel work, remodeling hotels.

Q. Where was your first office?

A. 125 Van Buren street.

Q. What building was that known as at that time?

A. The Jenks Building.

Q. Is that the building that they formerly called, part of the McCoy Hotel property?

A. It is.

Q. Where was your next office?

A. In the old Exchange Building, across the street.

Q. Which is sometimes called what other? Has it another name?
A. It was afterwards changed to the Omaha Building.
Q. Where was that located with reference to the Jenks Building?
A. Across the street.
Q. What corner was it on?
A. On the southeast corner of Van Buren and Pacific avenue at that time.
Q. How long was your office there, for about how long?
A. About four years.
Mr. Mecartney: Did you ever have anything to do with the plans of the Jenks Building?
A. I worked on the drawings for the plans of the Jenks Building.
Q. Do you know the McCoy Hotel property in question here?
219 A. Yes, sir.
Q. How long have you known that property?
A. For thirty years.
Q. Have you ever had anything to do with it as an architect?
A. Yes, sir.
Q. What?
A. Oh, remodeling the building about four years ago.
Q. Did you have anything else to do with it at any other time?
A. Yes, I had some other alterations to make, about two years ago and also about one year ago.
Q. State in the order just briefly, commencing with your early experience—Well, I will ask you this: What work in general have you done as an architect, putting up buildings or planning them or superintending them in Chicago. I am not asking you specifically but the general character of your work? Has it been general?
A. General class of work.
Q. And what in general—what character of buildings have you from time to time constructed in Chicago as an architect?
A. Well, all kinds of business buildings, apartments, remodeling hotels and building hotels.
Q. Where was your first principal work done when you opened business in 1886?
A. In Pueblo, Colorado. I built the Union depot and the
220 hotel there.
Q. When with reference—when did your business turn to be largely or definitely a hotel architect's business?
A. In 1896 I made a specialty of that work.
Q. Will you state the various h ls, mentioning the largest that you have constructed as an architect?
A. The Windsor Hotel at Jacksonville, Florida.
Q. How large either in rooms or in capital was that enterprise?
A. Of 226 rooms, representing a cost of about $250,000.
Q. And just a few of the largest, Mr. Newell?
A. The Ione Hotel at Guthrie, Colorado, the Kenora Hotel, The Tourist Hotel at Kenora, Canada, the Bay City Hotel at Bay City, Michigan.

Q. Have you ever had anything to do with the hotels in the down-town district in Chicago.
A. Yes, sir.
Q. Outside of the McCoy Hotel?
A. Yes, sir.
Q. What?
A. In remodeling.
Q. What hotels have you remodeled?
A. The old Victoria at Van Buren and Michigan avenue, the Windsor-Clifton at Monroe and Wabash.
Q. Where is that with reference to the elevated railroad? or does it face it or not?
221 A. It has the elevated structure on the Wabash avenue side.
Q. State another?
A. The Wellington Hotel.
Q. What corner is that?
A. Jackson Boulevard and Wabash avenue.
Q. Where is that with reference to the elevated railroad?
A. It has the elevated on the Wabash avenue side.
Q. In the course of your business as an hotel architect what had you ever to do with calculating the earning power of hotels?

Mr. Walker: That is objected to.
The Court: He may answer.

A. In preparing plans it is necessary to lay out the rooms to bring the most money or the largest income for the smallest amount invested.
Q. What occasion have you had to learn from time to time the rental values of hotel property?

Mr. Walker: I object to it.
Mr. Mecartney: Or their power to add to the income?
Mr. Walker: Well, that is a double question. I object to it because it is double; and it is speculative.
The Court: He may answer.
The Court: Well, I think it is a double question.
Mr. Mecartney: Well, strike out the latter part.

222 A. It is naturally, to provide an income for my client's investment as a renting proposition.
Mr. Mecartney: How much experience have you had, can you estimate, in any way, with respect—particularly with reference to rental of business property for hotels? Rentals to be paid for a hotel?
A. I have had a great deal of experience in the last fifteen years in that line.
Q. Are you thoroughly familiar with the McCoy Hotel as it existed in 1894 and 1895?
A. Fairly so.
Q. Are you familiar enough with it in your judgment as to

make an estimate of its value in 1894 or 1895 or about that time? And immediately before the construction of the elevated loop?

A. I am.

Q. Do you remember what was done with the Jenks Building after Mr. McCoy purchased it?

A. Yes, sir.

Q. What?

A. The openings were cut through on each floor and the offices were changed into rooms, some of the larger rooms were divided into two rooms, and some bathrooms put in.

Q. In other words, joined to the hotel, became part of the hotel?

223 A. Became part of the hotel, and the entrance was through the hotel.

Mr. Mecartney: Prior to the time—or withdraw that question—Mr. Newell, did you as an architect have to do with the building or buildings in 1893, 1894, 1895 and 1896 along that time in Chicago?

A. Yes, sir.

The Court: You knew the market value of the labor and materials, during that time?

The Witness: I did.

Mr. Mecartney: Do you have any recollection now of the general cost of construction of buildings at that time in Chicago?

A. Yes, sir.

Q. Can you estimate and will you estimate, first now, the value of this McCoy Hotel building or both buildings, as you may choose, as of those years or during that time?

The Court: He may answer.

A. Yes, sir.

Mr. Mecartney: Please give your estimate.

A. I estimate on the basis of 11 cents a cubic foot for buildings of that kind that were built in that period, which brings it to a cost approximately of $126,000.

The Court: Well, which buildings?

The Witness: Including both buildings.

224 Mr. Mecartney: 1893, 1894, 1895 and 1896.

The Court: You so understood, did you not, Mr. Newell, 1893, 1894 and 1895 and 1896?

The Witness: Yes, I understood that.

Mr. Mecartney: Now, Mr. Newell, I will ask you whether you have an opinion as to whether or not the McCoy hotel improvements, on those lots, were an appropriate class of improvements with reference to the grounds, at that time, 1894, 1895 and 1896?

A. Repeat the question, please.

(Question read.)

A. I believe the location was suitable for hotel purposes.

Mr. Walker: No, I move to strike that out.

The Court: It may be stricken out.

Mr. Mecartney:

Q. Well, you can just answer the question as it is put. Do you understand the question?

A. I do, I do.

Q. And you consider it an appropriate improvement for the ground at that time?

A. I do.

Q. Do you know, or have you any idea as to that corner at that time being more appropriate for any other class of improvement than for hotel property?

A. It was a little early for a hotel in that location, but on account of the railroad facilities I think it was the best building that could be put there for an investment on that property, that is, when it was built.

225

Q. Have you an opinion, Mr. Newell, of the fair market rental of that hotel property in the years 1894, 1895 and 1896? That might be answered yes or no. Have you an opinion of the fair rental value of that hotel property in 1894, 1895 or 1896?

Mr. Walker: That is objected to.

The Court: I don't see how that is material or how that is competent in this case.

Q. Mr. Newell, have you observed the elevated loop structure that is in front of this property on Van Buren street from the time of its construction up till now?

A. I have.

Q. Mr. Newell, were you acquainted with the rental value of hotels in the city of Chicago, in the down town district—Well, I will ask it generally—Were you acquainted with hotels in the city of Chicago in 1894, 1895 and 1896?

A. To a certain extent.

Q. Were you familiar with the rental values of hotels of the general character, as the McCoy Hotel, as of that time?

The Court: in the city of Chicago.

Mr. Mecartney: In the city of Chicago, yes.

A. Yes, sir.

226

Q. Was there any known basis or customary rate on which the value, the rental value, of hotels were figured—Is there any basis, any known basis or customary rate on which the value, the rental value of hotels was figured or based, in the matter of hotels of this character?

A. There was.

Q. Have you an opinion based upon, or practically based upon such rate as to what the rental value of the McCoy Hotel was in those years?

A. I have.

Q. State it.

Mr. Walker: Objected to.

The Court: He may answer.

Mr. Walker: Exception.

Q. Mr. Newell, what hotel of this class did you have to do with in the city of Chicago, north of Harrison street, west of the lake, east of the south branch of the Chicago river and south of the main branch of it, in 1894, 1895 or 1896?

A. The Lindel Hotel.

Q. Where was that?

A. Old number 349 Fifth Avenue.

Q. Whereabouts was it?

A. Just north of Harrison Street, a seven story building of this same cha-cter; not as good as this hotel, though.

Q. No, no. Did you know anything about the value of the g-ound in 1893, 1894, 1895 or 1896, of that Fifth Avenue
117 place, near Harrison, at that date?

A. It was leased on the basis of $1,000 a foot.

Q. I didn't ask you that, whether it was leased on the basis of $1,000 a foot or not. Do you know what its value was, as a real estate man, or know anything about it?

A. Yes, sir.

Mr. Mecartney:

Q. State your estimate of that rental value.

A. At forty cents per day per room for the hotel portion.

Mr. Walker: I move that that be stricken out.

The Court: It may be stricken out.

Mr. Mecartney: Suppose the rental in the market is fixed on the basis of so much per room——

The Court: I think that answer ought to be stricken out. The question is as to the rental value of this property.

Mr. Walker: As a property.

The Court: As a hotel property in 1894 and 1895, where it was located.

The Witness: I can only state that a hotel of that character, at that period, that the rental value can be based upon the number of rooms, and 220 rooms would be about $33,000 a year for the hotel proper, not including the store rental.

118 Mr. Burns: I move that that be stricken out.

The Court: It may stand.

Mr. Burns: Exception.

Q. Now, have you considered—What, in your judgment, was the better side for rental purposes of that hotel the east or the south side?

A. The south side.

Q. Have you an opinion as to the effect upon the market value of the hotel, those hotel premises of the construction of the elevated railroad in 1897 and putting the same into operation for elevated railroad purposes. The question is, have you an opinion upon the effect?

A. I have.

Mr. Mecartney:

Q. What was that opinion or what is that opinion with reference to its having been detrimental or beneficiary?

The Witness: You mean as to the rental value of that room?
Mr. Mecartney: That is right.

A. In my opinion it is 25 cents per day.

Mr. Mecartney: No, I don't mean how much.
The Court: That wasn't the question at all, Mr. Witness. The question is whether it was detrimental or beneficial.
Mr. Mecartney: Yes, The question is whether it was detrimental or beneficial.
229 A. Why, detrimental.
Mr. Mecartney: I am going to ask you, in your opinion—Don't answer this now—Don't answer this question that I am going to ask you until further orders. I will ask you what, in your opinion, was the effect of the construction and operation of the elevated road on the then rental value of the hotel premises which you have mentioned.

Mr. Walker: I object.
The Court: In actual figures?
Mr. Mecartney: Yes, in actual dollars and cents.
The Court: Objection sustained.
Mr. Mecartney: Exception by the plaintiffs.

Q. Now, Mr. Newell, will you tell us, in your experience as a hotel architect, what, in your judgment, are the special demands of hotel property, I mean, say of its physical convenience—as to its physical convenience and surroundings.

Mr. Walker: That is objected to.
The Court: He may answer.

A. One of the principal elements is the absence of unusual noise. The beautiful appearance of the building and the privacy of the hotel rooms, especially on the upper floors.
Q. I asked you with reference to physical convenience and outside of location. Your former answer, you know, has been stricken out. I don't know whether you understand that.
230 A. I mean in addition to what I answered.
The Court: Well, give your other reasons then, the other points that you gave before.

Mr. Walker: Same objection.

The Witness: Unusual noises about the hotel——
The Court: You mean the absence of noises.
Mr. Mecartney: Yes, you mean the absence.
The Witness: The absence is desired, yes, of unusual noises, the privacy of the rooms in the upper floors and the beauty of the architecture of the building.

Mr. Mecartney:

Q. Now, in what respect or in what respects does the operation, the construction and operation of this railroad effect, or did it affect, the use of that property particularly for hotel purposes?

Mr. Walker: Objected to.
The Court: Objection overruled and exception allowed.
Mr. Walker: Yes, exception.
Mr. Mecartney: Yes.

A. The first would be the appearance of the building, which is marred by the structure. The second would be the noises that are caused by the running of trains there, and the third the fact that the rooms are facing the structure, the elevated structure, would not be as beautiful as if the elevated—as private, I mean, as if the elevated was not there. Those would be the particular
231 reasons.

Mr. Walker: I move to strike it out.
The Court: Motion denied.
Mr. Walker: Exception.

Mr. Mecartney:

Q. Did you observe, or have you observed, whether or not that structure interferes to any extent with the light of the second floor rooms.
A. It does, while the trains are passing.
Q. Did you observe whether the structure interferes or what effect it has on the actual use of the ground floor or stores?

Mr. Burns: We object to that.
The Witness: Yes, sir.
The Court: He may answer.
Mr. Burns: Exception.

Mr. Mecartney:

Q. What is the effect on the use of the stores?

Mr. Burns: That is objected to, "on the use of the stores". What it does there is another matter.
The Court: Objection sustained.
Mr. Mecartney: Well, the Court will rule on that.
The Court: Proceed.

Mr. Mecartney: You may proceed, the Court says.
The Witness: It keeps out the light and the sun at certain
232 times of the day.

Mr. Mecartney:

Q. Did the operation of the trains have any effect upon the use of the stores?
A. It also darkens the stores as the trains go by.

Mr. Mecartney:

Q. Do you remember some of the office buildings that were ... Van Buren Street just prior to the construction of the elevated ...?

A. Yes, sir.

Q. Just name them quickly, please.

A. I believe the Fisher Building, the Rialto, the Omaha or Exchange Building, and I believe the Old Colony was in the course of construction.

Mr. Mecartney: Yes. Mr. Newell, assume for the purposes of your answer to this question, that the ground under the McCoy Hotel premises was worth in 1894, 1895 and 1896, approximately $5,000 a front foot on Van Buren Street, or nearing $600,000 for the entire holding, could you give an estimate of the effect on the market value upon that holding of the construction and the operation of the elevated loop—Strike it out—of the construction of the elevated loop in the block in front of these premises for hotel purposes? That can be answered by yes or no.

Mr. Walker: Objected to.

The Court: His qualifications upon the ground value have not been shown. Merely the fact of stating what they were I
233 don't think qualifies him to answer.

Mr. Mecartney: Supposing a witness would state that he knew the ground value and didn't know the building value, they are both joined together. I could not ask him, assuming the building value is so much, and then prove it by another witness, what, in your opinion, was the estimate of it—What, in your opinion, was the damage, and that being so, I could ask the expert on buildings, assuming the ground value,—he has some general knowledge of the ground value,—what the effect would be.

The Court: If you want to ask him a question with reference to the value of the—as to the effect of the elevated railroad upon a building devoted to hotel purposes, merely because it was worth $5,000 a foot or $2500 a foot, or worth a thousand dollars a foot, that is not the question; the Court thinks the deciding fact from this case, with reference to the question asked him upon the qualifications that he has——

Mr. Mecartney: Suppose I asked him about his knowledge of ground values there and he stated that he could not give a very close estimate on the ground values; that he is not familiar enough with them, although he might give a minimum or a maximum, but he is not familiar with it. Now, I have another witness who is familiar with it, for instance, and he gives the ground value.
234 Now, then, assuming that ground values and the building values were given by these witnesses, one witness giving the ground values, this witness would be competent to estimate the effect on the market value as if a man who knew the ground values was not so very good——

The Court: Do you contend that there is a different rule than the one upon which he bases the fact that the rental value is affected?

Mr. Mecartney: I can prove it in both ways.

The Court: Would you get at this question by reason of your estimate of the market value, Mr. Newell?

The Witness: I would base it on the capitalization of the rental value.

The Court: That would be the same basis as you made the other.

The Witness: Yes, that would be the same basis as I made the other, as the hotel, for the hotel property.

The Court: Therefore, it would not let any additional light on it.

Mr. Mecartney: I would like to make my record, although I don't think——

Mr. Walker: You have got your question and the Court sustains my objection, as I understand it.

The Court: Yes.

235 Mr. Walker:

Q. When you gave the value of this building at 11 cents a cubic foot, the McCoy building, you found the cubical contents of that building, took a value at 11 cents, multiplied it and it gave you a figure of one hundred and some odd thousand dollars, didn't it?

The Court: $126,000.

Q. Now, Mr. Newell, in 1892—at what date did you figure this building as being worth 11 cents a cubic foot?

Mr. Mecartney: He didn't say 1892.

Mr. Walker: I am asking him now what he did. Did you place it at 11 cents a cubic foot?

A. I took the date of beginning——

Q. That building was built in 1883.

A. For the World's Fair, 1893.

Q. You put that building as being worth 11 cents a cubic foot in 1893, 1894 and 1895, after the World's Fair closed, am I right about that?

A. Yes, sir.

Q. That is to say, to construct a building now of the same architecture as this and of the same material as this would cost 11 cents a cubic foot now, in 1893, 1894 and 1895, is that right?

A. Yes, sir.

Q. How long, Mr. Witness—I withdraw that question. Would you recommend, after you had seen the Fisher Building, in 1893 or 1894 or 1895, or the north end of the Monadnock, half 236 the block, or the erection of the Old Colony Building, as an architect, would you recommend anybody to have built the construction on this ground that you saw there in 1893, if the ground was vacant and he was about to improve it?

A. They couldn't have built it there on account of the building ordinances.

Q. Yes. So, as a matter of fact, such a building in 1902, for its highest and best use, did not add anything to the value of the property at all, did it, for its highest and best use?

A. It did at that time.

Q. Oh, I am not talking about 1883. We are talking about 1903 or 1893.

A. Well, at that time——

Q. It would be better for the owner of such a property to have it vacant, as far as its highest value was concerned, in 1903 or 1902, if he desired the modern building on it, than to have this building upon it, wouldn't it?

A. Well, I can't tell what the owner would want there, but if I had that building on it I wouldn't want to tear it down and put another one on it at that time, or at the present time even.

Q. Is it a fire-proof building in any way?

A. Semi-fire-proof.

237 Q. What do you mean by semi-fire-proof?

A. Well, brick walls supported on steel and covered with terra cotta and concrete, wood joints covered with wire lath and concrete on the floors, concrete deafener.

Q. How many brick walls are there in the building other than the inside walls or the outside walls, within the outside walls?

A. I have torn out some of them. They were all brick walls on the first floor and the basement.

Mr. Walker: May it please the Court, there was some part of this evidence that your Honor refused.

The Court: Some part of what?

Mr. Walker (continuing): That you struck out of the evidence of this witness, that he gave, that you struck out.

The Court: With reference to the amount that he stated?

Mr. Walker: Yes. Now does that apply to the amount that he gave in evidence what he considered the rental value of this property?

The Court: No, the rental value of $33.000 I allowed to remain in.

Mr. Walker: The rental value of $33,000 your Honor allowed to remain in?

The Court: Yes.

Q. Mr. Newell, in giving your estimate of the rental value
238 of that property did you have any reference or take in consideration all the stores in the building?

The Witness: I did not.

Q. As I understand you, your testimony was directed as to what you thought the hotel as it stood as a building, might as a hotel be rented for?

A. Yes, sir.

Q. In what year?

A. In 1895.

Q. Suppose every year that the rent had increased, and materially increased from the time that the railroad there came under 1905.—I have not got time to look at it, but let us suppose it did; that every year every time a new lease was made from 1897 to 1905 there was material increase in the rental in the amount he had to

pay, even if he had to burn gas, would you then say that the light affected the use of the property?

The Witness: It would to a certain extent.

Q. The rent of the drug store, as I am informed, was about 2400 or 2500 in '92, '3 and '4, and ranged from 2500 to $6,000, which is more than double, in 1905, per year. Would you say then that the railroad that brought her people there damaged the use of the property for a drug store?

A. I would say that the increase of the population of the City of Chicago.

239 Mr. Walker: Now, without getting a reply to my question as put, the witness insisted on answering according to his idea. He answered the question by saying that he attributed the crowd to an increase in population.

The Court: He may answer the question.

Mr. Walker: I never asked any such question as that.

The Court: Proceed.

Mr. Walker: It was not responsive to my question. Hence the examination upon that subject. He interjected it.

The Court: All right, Mr. Walker.

Mr. Walker: Now, Mr. Newell, whether the population of the——

Q. Now, Mr. Newell, you gave a figure which included the 25 foot building of $126,000, was it?

A. Yes, sir.

Mr. Walker:

Q. Were they worth what they cost in '95?

The Witness: For that purpose.

Q. That is you gave what it would cost to build them in '95 new?

A. Yes, sir.

Q. (Continuing:) Without any depreciation for time or style or the development of business methods in the market?

A. If the buildings are properly kept up to meet the demand——

Mr. Walker:

Q. Is that right?

The Witness: Well, the increase in cost of material and labor would equal the depreciation of the value of that building.

240 Q. Did you deduct anything on account of its age, of either building?

The Witness: I did not consider any depreciation.

Q. Did you deduct anything for the change in the method of construction of buildings in downtown property between '83 or '84 and 1895 of the value of that building. Yes or no.

A. No.

Mr. Walker: Did you deduct anything by reason of the fact that if the ground were vacant and a building would be constructed that might or might not be a proper kind of improvement? Did you deduct anything for that?

A. No.

Q. Mr. Newell, in your figure, did you include the building on the 25 feet?

A. Yes, sir.

Mr. Walker: You know how this 25 feet is constructed upstairs?

A. Yes, sir.

Q. As part of the hotel?

A. Yes.

Q. Now, assume it were constructed the same way with the exception that the stairway that lead upstairs or where it was before they took it out, and put the office on the ground floor, and it was a hotel of 25 rooms, what was its rental value for that purpose?

241 A. The rental value would be 40 cents per day for the rooms above the first floor.

Redirect examination.

By Mr. Mecartney:

Mr. Mecartney: What was the new cost per cubic foot of a building of a structure of this kind in 1894, '5 or '6?

Mr. Walker: That is objected to.

Mr. Mecartney: I mean the cost of the building, a new structure of this same character in 1894, '5 and '6 per cubic foot?

Mr. Walker: The objection is this. I can state it. He gave that as his figure on direct examination and on cross examination it developed that was new and without deterioration, and no depreciation, and then he came back on redirect and asked what it would cost new, which he could have asked on direct.

The Court: He may answer.

A. 22 cents a cubic foot.

Mr. Mecartney: Yes, that is one. How do you arrive at the conclusion not to allow anything for those elements?

Mr. Walker: I object to it because it is not redirect and not legitimate on the redirect examination, and it is only permitted under an exercise of the Court's discretion under the rules.

The Court: He may answer.

To which ruling of the Court the defendants by their
242 counsel then and there duly excepted.

A. A building of this character, a hotel building has to be kept up continually.

Mr. Mecartney: A little louder.

A. A building of this character has to be kept up continually and in addition to that the cost of labor and material advances to such an extent that it would overcome any depreciation of the material in the building.

Q. Then when you say you don't allow for these elements you mean the fact that those elements existed did not reduce your valuation. Is that what you mean?

A. Yes, sir.

Recross-examination.

By Mr. Walker:

Mr. Walker: At what date do you say this building was twenty-two cents a cubic foot?

A. I stated that it would cost that to rebuild the building.
Q. When?
A. In 1895.
Q. That is, in 1895, it would have cost to build a building like this twice the amount that you gave as its value in 1895?
A. Under the construction that would be required at that period.
Q. You could not build a building like this at all in 1895, could you on this property?
A. Yes, sir.
243 Q. I know it is possible but wasn't it prohibited?
A. It was.

Mr. Walker: What would a modern building, built under the Ordinances, proper for that ground in 1895, cost a cubic foot?

Mr. Mecartney: I object. He has been over that.
The Court: He may answer.
Mr. Walker: No, I tried to find out. The Court says you may answer.

A. From twenty-five to thirty-two or forty cents.
Q. A cubic foot?
A. Yes, sir.
Q. And how high a building would have been right in 1895 or '93?
A. It depends on what purposes it was used for.
Q. In your opinion, for a hotel?
A. Twelve stories.

H. E. Perkins, called as a witness on behalf of the defendants, having been first duly sworn, was examined in chief by Mr. Walker and testified as follows:

Q. Speak out loud, Mr. Perkins, and you need not do it so as to make your voice sound as bad as mine, but speak so that we can all hear you. What is your business?
A. Civil engineer.
Q. And connected with what company?
A. With the elevated railroad.
244 Mr. Walker: With which railroad are you connected?
A. With all of them now, but the Northwestern Elevated since 1903.
Q. And have you been familiar with the structure of the loop and the railroad in Van Buren street since that time?
A. I have.
Q. You know what the standard structure is in Van Buren street do you?
A. I do.

Q. Now, Mr. Perkins, with the exception of the change of the lengthening of the platforms, that is the only change that has been made, isn't it, in the last six months or a year, the platforms of that—I am assuming that your Honor because that is what McCoy's testimony was—changes have been made in the extension of the platforms, hasn't there?

A. The platforms, and then there has been a bridge built in Van Buren street.

Q. Oh, well, I am not talking about State street. I have reference to the structure as it appears between the blocks of Clark street and La Salle. The change there has been in the last six months, the elongation of the stations, they have been made a little longer.

A. That is all.

Q. That is all. What is the additional length of the station, or have you a plat there, without that addition to the station
245 which has occurred in the last six months from the through routing?

A. Yes, the plat shows the present condition. That is, it shows a length of 48 feet, on each end of it, on the east end of the platform, that did not exist until six months ago.

Cross-examination.

By Mr. Mecartney:

Q. In this sketch you are looking at it from above, are you not?

A. Yes, it is a ground plan.

Q. It doesn't show the steps down from the station, does it?

A. No.

Q. It does not show the general shape of the station structure, just the mere bare outline of it, isn't that right?

A. It shows the shape it would be if you were above looking down on it.

Q. Well, the bare outside outlines, that is what you would call it, isn't it what is your engineering term for that?

A. Simply a plan.

Mr. Walker: It don't show any vertical sections.

The Witness: No.

Mr. Mecartney:

Q. Now, this also does not show the network of iron, the iron netting nor the ties nor does it reveal the density of the structure, which actually exists there, if you were to look down on
246 it from above, does it?

A. It does not.

D. B. MacRae, called as a witness on behalf of the defendants, having been first duly sworn, was examined in chief by Mr. Walker and testified as follows:

Q. What is your business, Mr. MacRae?

A. I am an accountant.

Q. An accountant, and with whom are you connected?

A. With the Chicago Elevated Railroad.

Q. How long have you been connected with any of the railroad companies?

A. Eight years.

Q. And are you the custodian of the books of the various railroads and their official documents?

A. I am.

Q. And I mean of all of them—way back since they have been—up to the present time?

A. I am.

Q. And you are the auditor for all of the elevated railroads that use the loop, are you not, today?

A. With the exception of the Oak Park.

Q. With the exception of the Lake Street?

A. Yes, sir.

Q. With that exception. Have you got in your possession
247 the books that show—on the Lake street as well as the others?

A. I have the possession of all the records of the Lake street prior to November 13, 1911?

Q. Has there been any change up to, from 1897, or when the structure was built, I am not talking about the extensions of platforms, or new bridges built to accommodate this through routing, that went into effect, but up to that time, has the structure and the location of the stations been the same?

A. It has.

Q. From the time they were built?

A. Yes.

Q. Now give us the stations.

A. Commencing on Van Buren street the first station is La Salle street. Then Dearborn, then State. On Wabash, going north, there is Adams, Madison and Randolph. On Lake street going west there is State and Clark. On Fifth avenue going south, there is Randolph, Madison and Quincy, eleven stations in all.

Q. Quincy street on Fifth avenue is a street between Jackson and Van Buren?

A. It is.

Q. And the Randolph street station that you speak of, you call it Randolph street station, although it is located, is it not, in the middle of the block?

248 A. Yes, sir.

Q. Between Lake and Randolph?

A. We call it the Randolph station.

Q. On Fifth avenue? The station platform proper, occupying that part of the street where the alley would be if extended?

A. That is correct.

Q. All right. Now, Mr. Mac[illegible]se, what elevated railroad, if you know, used this structure in 1[illegible]7?

A. In the order in which they enter the loop, the Lake street elevated, the Metropolitan elevated, and the South Side elevated.

Q. And they all occupy or use it—They did prior to the first of November, 1897?

A. They did.

Q. We have got the dates in as to which went in first. You read them, Mr. Mecartney. Now, when did the Northwestern go into operation?

A. In 1900, I think. I will have to refresh my memory on that.

Q. Please.

A. On the first day of June, 1900.

Q. All right. Between 1897, at the time they were all going around the loop, except the Northwestern, and the time that the Northwestern operated its trains around the loop, was there any difference in the use of the inner and the outer loop before
249 that time or did they all go around on the same track from the time they started up to the through routing change within the last two or three months?

A. Until the change in through routing was made on November first, of last year.

Q. Now, state if prior to that time and beginning in 1907 all the trains of the railroad operating on the loop, on this track, stopped at all the stations?

A. They did.

Q. To take on and let off passengers, the stations that you have named?

A. They did.

Q. Do you know where the terminus, the north terminus of the South Side elevated railroad was?

A. I do.

Q. Before it was operated on the loop?

A. I do.

Q. Where was it?

A. It was on Congress street between Wabash and State, on the south side of Congress.

Q. Yes. How does the south side make its connection with the loop from that point to where the loop runs on Van Buren and in Wabash avenue, how was that connection made?

A. That connection was made in 1897 by building the loop, connecting the South side elevated on the street south of Congress, with the loop on Van Buren and Wabash.

Q. Yes. Well, I am just naming it to get it in the record,
250 Mr. MacRae. A two track structure into Harrison around Wabash avenue to Van Buren street where they met the loop that you have described?

A. That is correct.

Q. Between the point at where they left the track at Harrison, a block south of their other terminus, and where they made the—where they met the loop proper, is there any station in Wabash avenue there?

A. There is one.

Q. Where is that?

A. At Congress street.

Q. Where was the eastern—no, before I get off of the South

Q. Through what territory did the South Side elevated run when it first operated on the loop in 1897?
A. It operated in the south part of the City of Jackson Park.
Q. It ran in the alley, did it not?
A. Part way.
Q. From Harrison street to 12th street?
A. From Harrison street to 12th street.
Q. And from 12th street south upon the rear end of lots that were condemned until it got between Wabash and State, the rear end of lots fronting State street?
A. That is correct.
Q. And when it got south of 39th, about a block south of
251 39th it turned to the east, did it not, alongside of that steam railroad?
A. Yes, sir.
Q. And the road ran east to a point between Prairie and Calumet and turned south on what was the rear end of lots, that right?
A. That is correct.
Q. Until it ran to 63rd street?
A. Yes, sir.
Q. And on 63rd street it turned into 63rd and ran east to Stoney Island avenue where Jackson Park was?
A. That is correct.
Q. And that was at the time, at that time the southern terminus of the line, is that right?
A. That is right on the public street at 63rd street.
Q. Now, in 1897 or up to 1905, was there any extensions made on that road or are those extensions since that time, since 1905?
A. There was an extension made in 1905.
Q. In 1905, what was that?
A. The Englewood branch was started in 1905 and was constructed from 59th street to Wentworth avenue.
Q. Was the other started in 1905, the Englewood branch and the Stock yards branch?
A. Not in 1905.
Q. Did they at any time change the south side structure
252 north of 51st street to a three track structure down to 12th street?
A. That change was made in about 1905.
Q. And that allowed express service from that date. Some trains running straight on the inside track going north, and the express trains going north, so that the other two tracks could be used for local trains, is that right?
A. That is correct.
Q. Now, in 1897, taking the same period, what was the eastern terminus of the Metropolitan?
A. On Franklin street.
Q. Well, at a point between Van Buren street and Jackson street?
A. Yes, sir.
Q. About the middle of the block on the west side of the street?
A. On the west side of the street.

Q. And from that—that was the eastern terminus then?
A. That was the eastern terminus then in 1899,—1897.
Q. Now when the loop was put in operation in 1897 how did the Metropolitan connect its trains with the loop?
A. The old terminal on Franklin street was abandoned and the line was straightened out and turned south on Franklin street to Van Buren.
Q. Turned south on what?
A. Turned south on Market street, I should say, turned
253 south on Market street to Van Buren, ran east on Van Buren to a connection on the loop at Fifth avenue.
Q. From where you turned, was it a two track structure there where it turned into Market street?
A. Yes, sir, a two track structure.
Q. Until it reached the loop at Fifth avenue and Van Buren. Was there any station there—after it crossed the river to Market street and turned into Market street before you reached the La Salle street station on the loop?
A. There was a new station put in on Franklin street, the old station on Franklin street being abandoned.
Q. Now, what sort of a structure—how many tracks were there, I mean on the Metropolitan?
A. The Metropolitan Elevated had a four track structure to Marshfield Avenue.
Q. Has it a four track structure now?
A. It is a four track structure now.
Q. And has since the time it was built?
A. And has been since the time it was built, yes, sir.
Q. To Marshfield Avenue?
A. That is correct.
Q. Where is that?
A. That is about a mile west, a mile and eight-tenths.
Q. Now, will you describe the lines of the Metropolitan that brought passengers to the loop or the down town district when they were in 1897?
A. At Marshfield there were three lines diverging, one
254 west, known as the Garfield Park line, to 48th Avenue——
Q. Now, where did that Garfield Park line run, straight out west, except it diverged at Sacramento Avenue, and then it ran out west, did it not, between Congress and Van Buren Streets on the rear end of lots, on its own right of way?
A. On its own right of way.
Q. At no place in the street. It runs that way until it gets to Sacramento Avenue, where it diverges to the south a block and a half and runs between Flournoy and Harrison, does it not?
A. I believe so.
Q. Over the rear end of lots, and not in either an alley or the street except where it crosses the street straight up to 48th Avenue, is that right?
A. That is right.
Q. A block west of Ashland is Western Avenue?
A. Yes.

Q. And then the next mile is Kedzie and the next is 48th Avenue, and that was the end in 1897 of that branch of the Metropolitan line, wasn't it?

A. That is correct.

Q. Now, what other branches were there that diverged from these four tracks—that was a two track structure, wasn't it?

A. That was a two track structure, yes.

255 Q. Now, what other was there in 1897?

A. There was what we called the Stock Yards line, a double track structure starting from Marshfield Avenue, running in a general northwest direction to what is known as the Robey Street Junction.

Q. When it got to Robey Street, then what?

A. I thought he interrupted.

Q. Yes, he said Logan Square, but you got it up to the Junction at Robey Street and then what?

—. ——.

Q. That road run to Marshfield Avenue, you said, and then on a two track structure it went directly north until you struck a point on the line, on a line with Milwaukee Avenue which runs northwest and southeast. It is a diagonal street, is that right?

A. That is right, yes.

Q. Then west of Milwaukee Avenue, it parallels Milwaukee Avenue out to Robey Street, that right?

A. That is correct.

Q. Then at the Robey Street Junction which you spoke about which was just north of that junction, just north of the junction it turned on the lots, the rear end of lots, on its private right of way that faced North Avenue, the lots on the north side of North Avenue, isn't that right, Mr. MacRae?

A. Yes, sir.

256 Q. Are you in a position now to give the distances from the Humboldt Park line to—in mileage, to where the road makes the four track connection at Marshfield?

A. Yes, I can give you that.

Q. All right, please.

The Witness: What is the question, Mr. Walker?

Mr. Walker:

Q. The distance from Logan Square terminus, to where it meets the four track structure at Marshfield?

A. 4 and 4/10ths miles.

Q. All right. Now what is the distance from the terminus of the Humboldt Park branch to where it makes the junction at Robey street?

A. Four and eight-tenths.

Q. Now, what is the distance of the Garfield Park line. I guess maybe I got that in, west 40th street to Marshfield avenue. Have you got that there?

A. Four miles.

Q. Now, what other branch is there, if any, or was there in 1897, about the first of November, on the Metropolitan?

A. The Douglas Park line.
Q. Just tell us where that went?
A. That was also a double track structure. We started at Marshfield avenue and went a short distance south of Marshfield and turned west. In 1897 that line extended to Western avenue.
257 Q. Now what was the distance on that line to Marshfield avenue?
A. Two and eight-tenths miles at that time.

The Court: Well, when did the Douglas Park branch go in?
Mr. Walker: Oh, they all went in before. The Douglas Park branch was extended to Western avenue up to the time of the date when he sues for damages.

Mr. Walker:

Q. Well, was it extended before 1905 or don't you remember?
A. Yes, there was an extension to 52nd avenue in 1905.
Mr. Walker: Yes. You can give the distance from 42nd to Marshfield.
A. Five and four-tenths miles from Marshfield.

258 D. B. MacRae, resumed the stand for further direct examination by Mr. Walker and testified as follows:
Q. Please take then the stations, and give me the stations as you come down to the various lines, before you meet the Loop. How many are there, take it on the Humboldt Park Branch?
A. The first I have is the Metropolitan Elevated, the main line from the Loop to Franklin. In that division of the road there are eight stations.
Q. What do you mean by the main line?
A. From the Loop to Marshfield.
Q. To Marshfield Avenue?
A. Yes, which is a four track system.
Q. There are eight stations to Marshfield?
A. Including Franklin Street.
Q. Including Franklin Street on Van Buren?
A. Including Franklin Street on Van Buren. On the Garfield Park Branch from Ogden Avenue to Fifty-second there are twelve stations, counting Ogden Avenue.
Q. Counting the Ogden Avenue Station?
A. Yes, commencing at Ogden Avenue.
Q. Now, about how far apart are the stations on that line?
A. On the main line they are——
259 Q. That is to Marshfield Avenue?
A. Yes, on the main line, to Marshfield Avenue they are 1365 feet approximately, a quarter of a mile.
Q. All right.
A. On the Garfield Park Line they are 1768 feet apart, approximately one-third of a mile. On the Douglas Park Line from Polk Street, that is excluding Marshfield Avenue, to the terminus there are 17 stations. They are an average distance apart of 1943 feet, not quite a quarter of a mile.

Q. So that the stations are between three and four blocks apart?
A. Approximately, about four blocks apart. They will average about four blocks.
Q. Now, go ahead.
A. On the northwest line, that is from Madison to Robey Street, there are six stations.
Q. That is on the Metropolitan?
A. That is on the Metropolitan, and they are 2324 feet apart, that is almost a half a mile.
Q. Five blocks?
A. Yes, sir.
Q. From four to five blocks apart?
A. Yes, and on the Logan Square from Western Avenue to California, they are 2412 feet apart.
Q. About four or five blocks apart?
A. Almost a half a mile.
Q. How many stations are there?
A. There are three stations only.
260 Q. Yes.
A. On the Humboldt Park line from Western Avenue to Lawndale, there are six stations, 1927 feet apart, or a little over one-third of a mile apart.
Q. How about the Douglas Park Branch of the Metropolitan?
A. I gave the Douglas Park Branch.
Q. Did you?
A. Yes, there are twelve stations on the Douglas Park Branch.
Q. All right, and you gave the distance, didn't you?
A. Yes, sir.
Q. All right.
A. On the Northwestern Elevated from Kinzie to Wilson Avenue, the only lines in operation in 1905, there are 22 stations. The distances apart is 1536 feet, about 3/10ths of a mile, about five blocks. On the South Side Elevated from the Loop to Jackson Park Avenue——
Q. Is that Stony Island Avenue?
A. Stony Island Avenue is the old name for it.
Q. It was Stony Island Avenue, and changed to Jackson Park Avenue?
A. It is Jackson Park Avenue now, but it was Stony Island Avenue in 1905. There are 23 stations and they are 1967 feet apart, about one-third of a mile. On the Chicago and Oak Park, now it is my recollection, Mr. Walker, that you only asked me on the
261 Oak Park, and the only evidence I have given on the Oak Park is the location of the line in 1897 and 1898, I may be in error but that is my recollection.
Q. I think you are right. Was there an extension of the Oak Park between 1897 and 1905?
A. There was.
Q. And where did it go?
A. That line terminated at Harlem Avenue.
Q. What?

A. Harlem Avenue.

Q. Did you give the mileage of that whole line or did you only give——

A. I gave the mileage to 48th Avenue only.

Q. What is the total mileage?

A. The total mileage is 9 and 3/10ths miles, that is from the Loop.

Q. What?

A. That is from the Loop, 9 and 3/10ths miles.

Q. How many stations are there and what is the distance between stations?

A. And that counts the little spur on Market Street.

Q. What?

A. That counts the little Spur on Market Street.

Q. Yes.

A. On the Oak Park, and that distance—there are 29 stations and the average distance apart is 1709 feet, practically one-third of a mile.

Q. Now, Mr. McRae, you gave the locations of the sta-
262 tions on the Loop. Have you anything to show the distances of the stations apart on the Loop?

A. Yes, sir, they are 960 feet apart, that is an average of one-fifth of a mile.

Q. One-fifth of a mile?

A. Yes, they are very close together.

Q. And that varies a little between the stations?

A. Yes.

Q. Then you have a permanent record of those that pay fare?

A. That pay fare, only the revenue passengers.

Q. Now, will you please, beginning at the different dates that the road operated, give me the number of passengers that got on at the station of La Salle and Van Buren Street?

A. Well——

Q. You understand me to have reference to the La Salle Street and Van Buren Street Station, don't you?

A. I didn't catch that, Mr. Walker. I was about to ask what station. La Salle and Van Buren.

Q. Well, I put it in the first instance at La Salle and Van Buren and then I got into something else. I am speaking of the La Salle and Van Buren Street station on the Loop which is just west of this property. My question is with reference to the number of passengers that took the road from 1897 to 1905, within the dates named by the Court at that station?

263 Mr. Mecartney: The plaintiff objects to this question and all evidence relating to the specific or estimated number of passengers that took this train, these trains at this Loop or anywhere else on the ground that it has no bearing upon the issues in the case. It is irrelevant, immaterial and incompetent and that such testimony in itself must naturally be considered as speculative and conjectural and incapable of being estimated either singly or together, with other elements, in dollars and cents.

The Court: Objection may be overruled.
Mr. Mecartney: Exception.

Mr. Walker.

Q. Go ahead, Mr. McRae, and give them?
A. The records of the Oak Park, all of the records for the Oak Park are not accessible, for all stations on the Loop for 1897, and I have the records for some of the stations but not all of them, and not having the records for all of the stations, I have omitted any Oak Park figures for 1897.
Q. But after 1897, from January, 1898, you have the Oak Park figures?
A. I have the Oak Park figures.
Q. Yes, all right.
A. In 1897, the station—the number of paying passengers entering the station at La Salle and VanBuren on the Metropolitan—I have got that in another form. I have it in condensed form
264 at that station for all of the road. Will that be satisfactory?
The Court: Yes, you would prefer it that way, wouldn't you, Mr. Walker?
Mr. Walker: Oh, yes, yes, they all stop there, from 1898 on, but you have for some of the other roads, you have not got the Lake Street——
A. For 1897.
Q. For the three months in 1897, that they operated, you told me?
A. Yes.
Q. You have others for those three months? You have the others?
A. Yes.
Q. Will you give me the others, the total?
A. On the Oak Park in 1898——
Q. Of course, you didn't have the Northwestern, because they didn't begin to operate until 1900?
A. La Salle and Van Buren for approximately three months of 1897, there was 161,753 passengers.
Q. Now, that refers to the alley "L" and the Metropolitan alone?
A. Yes. For 1898, including the Oak Park, there were 851,147.
Q. How many?
A. 851,147. For 1899, there was 1,294,821.

Mr. Mecartney: This objection of mine and my record, as I understand it, is saved, your Honor, without repeating it to
265 each question.
Mr. Walker: Oh, yes.
The Court: Yes, for each year.

The Witness: For 1900, 1,806,871. For 1901, the Northwestern in operation, 2,324,927. For 1902, 2,392,190. For 1903, 2,862,-
920. For 1904, 3,249,428. For 1905, 3,659,583.

Mr. Mecartney: Now, I want to make an objection—I forgot at

the time the court overruled my objection, to make the alternative motion, that if counsel is allowed to put in this evidence as to this one station, I shall insist that he put in the evidence for the same years of all the other stations on the Loop.

The Court: I understand that he may do so.

Mr. Mecartney: And still reserving my right to object to the entire evidence as incompetent and immaterial.

The Court: Well, I have an idea that it will be put in evidence without your insisting upon it being done.

Mr. Mecartney: If he does not put in the others, I move that this go out, if he does not put in the others.

Mr. Walker:

Q. Have you the record for the number of passengers that—during those same years, that took this road and paid their fare at Dearborn Street, one block east of Clark Street?

268 A. I have those figures.

Q. Will you give them to me?

Mr. Mecartney: The same objection is made, and objection overruled and exception, your Honor?

The Court: Yes.

Mr. Mecartney: Exception.

The Witness: For 1897——

Mr. Walker:

Q. That is Van Buren and Dearborn Street, you understand?

A. Van Buren and Dearborn Street, for 1897, the Oak Park excluded, there was 194,904. That was practically three months. For 1898, 834,478. For 1899, 1,266,882. For 1900, 1,721,289. In 1901, 2,112,775.

The Court: Well, after the Northwestern started?

The Witness: Yes, after the Northwestern started. Six months' Northwestern operation. In 1902, 2,338,944. In 1903, 2,547,007. In 1904, 2,481,606. In 1905, 2,558,976.

Q. Just a minute, Clark and La Salle, Fifth Avenue. The nearest station on Fifth Avenue is Quincy Street?

A. Quincy Street, yes.

Q. Isn't it?

A. Quincy and Fifth Avenue.

Q. And that is about the same distance as the Franklin Street station of the Metropolitan, that is just outside the Loop?

267 A. Yes. Do you want Quincy and Fifth Avenue?

Mr. Walker:

Q. Give me Quincy Street. Well, if State and Van Buren is in front of you. Give me State and Van Buren first.

A. Do you want State and Van Buren?

Q. Yes.

A. For 1907, the Oak Park excluded, for two months and a half operation there was 515,491. In 1898, there was 2,209,580. In

1899, there was 3,112,555. In 1900, 3,873,478. In 1901, the Northwestern, six months' operation, there was 4,565,240. In 1902, 4,993,241. In 1903, 5,416,234. In 1904, 5,338,405. In 1905, 5,587,977.

Q. Now, will you kindly give the Quincy Street station, please, just north of Van Buren Street, on Fifth Avenue?

A. Quincy and Fifth Avenue for 1897, there were 285,807. In 1898, there was 1,332,384. In 1899, 1,769,976. In 1900, 2,510,355. In 1901, the Northwestern operation six months, there was 3,103,881. In 1902, 3,645,015. In 1903, 3,771,727. In 1904, 3,588,081. In 1905, 3,494,933.

Q. Mr. McRae, have you the list of the passengers during those same years on this road at the Adams Street Station on Wabash Avenue. That is the next one north on the Loop, isn't it, on Wabash?

268 A. On Wabash.

Q. On Wabash.

A. I have those figures.

Q. Give me those.

A. For 1897, with the Oak Park excluded, there was 225,059. In 1898, 981,223. In 1899, 1,656,257. In 1900, 2,351,391. In 1901, Northwestern operation six months, 2,977,528. In 1902, 3,330,486. In 1903, 3,592,578. In 1904, 3,675,005. In 1905, 4,236,506.

Mr. Walker: That is as far as I care to go, your Honor.

Mr. Mecartney: The plaintiff now moves that this evidence as to all of the—as to each and all of the passengers at the stations named by the witness, be excluded, unless the counsel puts in the other elevated—the travel on the Loop at other stations and not waiving the former objection that the plaintiff would have to show, to make the evidence competent, all other travel down town, travel in the city, not admitting it would be competent, your Honor, but in order for this evidence to be of any value to the jury whatever.

The Court: What do you say, Mr. Walker?

Mr. Walker: I don't see how your Honor can strike out this evidence. What are you going to do with the La Salle Street station, strike that out at his request?

The Court: You have given about five stations, haven't 269 you?

Mr. Walker: Yes, I have given the five nearest stations to this property as the record shows. I have no particular objection to giving the balance.

The Court: Have you got Adams and Wabash?

Mr. Walker: Yes, I have got Adams and Wabash and Quincy and Fifth Avenue and all the stations on the street, Van Buren Street.

The Court: Is Madison and Fifth Avenue any further away than Adams and Wabash?

Mr. Walker: Oh, yes, Adams is considerably further away than Quincy, Judge. There is Clark, Dearborn is one, State is two, Wabash three, Jackson and Adams. That is five. Now, to the Quincy Street station, that is from Madison Street, there is Jackson, Monroe and Adams. I will give Adams. I don't care. I will give Madison.

Q. Give me Madison and Wabash and Madison and Fifth Avenue.

The Court: If you don't care why, all right.

Mr. Walker: I thought I had given the stations nearest the property, I thought I would give those, but I haven't any objection to the others.

The Court: As the court indicated before, if you desire to have the other stations go in——

Mr. Walker: The only point is this. I will be glad to
270 give the other stations, but I do not want my giving them to be assigned as error. I have no objection to La Salle Street, not at all.

The Court: I will overrule the motion on the theory that——

Mr. Mecartney: Exception.

The Court: —on the theory that Mr. Mecartney has the witness here for cross-examination, and I don't think it avails your objection any when you can bring out the figures on the other stations.

Mr. Mecartney: I see your Honor's attitude. I will take an exception.

Mr. Walker: I will give him Madison and Fifth Avenue, if it is desired and Madison and Wabash.

Mr. Mecartney: I shall renew my motion, if he don't give them all. If he claims a benefit from this entire Loop, as an institution, we want to know that that entire Loop brought, and then compare it, as near as we can with the——

Mr. Walker:

Q. Well give them all.

Mr. Walker: May I add that is during the three months of 1897, only two roads were given, the alley "L," because we have not the record of the Metropolitan, but up from 1898, 1899 to 1900, we are
271 giving three because the Lake Street, the alley "L" and the Metropolitan—we give those, because the Northwestern was not then running. When you get to 1900, up to 1905, we are giving them of all the four companies, because they were all four running them.

The Court: Yes. And the witness usually states what year the Northwestern came in, because you will see a change in the figures there.

A Juror: Yes.

The Witness: Taking the stations on the Loop——

The Court: Talk up loud.

The Witness: Taking the stations in order and following them around the Loop, they are as follows: Madison and Wabash for practically three months in 1897——

Mr. Walker:

Q. With just the alley "L" and the Metropolitan?

A. With the Metropolitan and the South Side 337,476. For

1898, 1,574,805. For 1899, 2,354,980. For 1900, 3,108,374. For 1901, 3,589,317.

Mr. Mecartney: 589,000?

The Witness: 3,589,317. For 1902, 3,853,307. For 1903, 4,221,626. For 1904, 4,126,895. For 1905, 4,691,887.

At Randolph and Wabash, the next station north, for 1897, the two roads only, 187,103. For 1898, 920,159. For 1899, 1,570,986. For 1901, 2,536,719. For 1902, 2,919,347. For 1903, 3,228,035. For 1900, 2,166,669.

For 1904, 3,232,797. For 1905, 3,377,383. At State and
272 Lake, for 1897, the two roads, 179,759.

Q. That is for three months?

A. That is for three months. For 1898, 891,480. For 1899 1,570,986. For 1900, 2,166,669. For 1901, 2,536,719. For 1902 2,919,347. For 1903, 3,228,035. For 1904, 3,232,797. For 1905, 3,377,383.

Clark and Lake Street, for 1897, for two—three months' operation——

Q. What station are you giving now?

A. Clark and Lake. We just passed State and Lake. At Clark and Lake for the three months, two roads only 217,454. For 1898, 1,110,876. For 1899, 1,548,761. For 1900, 1,882,918. For 1901, 2,008,065. For 1902, 2,263,533. For 1903, 2,331,143. 1904, 2,061,095. In 1905, 2,250,783.

At Randolph and Fifth Avenue, for 1897, two roads, three 1900, 2,837,515. For 1901, 3,341,548. For 1902, 3,621,799. For 1901, 3,341,548. For 1902, 3,621,799. For 1903, 3,901,517. For 1903, 3,901, 517. For 1904, 3,791,742.. For 1905, 4,108,777. 1904, 3,791,742. For 1905, 4,108,777.

At Madison and Fifth Avenue, and which station completes the circuit of the Loop, in 1897, for two roads, three months, 447,022. In 1898, 2,209,144. In 1899, 3,145,312. For 1900, 4,185,576.

For 1901, 4,940,499. For 1902, 5,298,613. For 1903,
273 5,736,788. For 1904, 5,645,654. For 1905, 5,713,700.

Q. Have you got the totals for those years?

A. I have those totals.

Q. By stations?

A. Do you mean for the entire period from 1897 to 1905?

Q. Yes.

A. Not by stations, but I have the period, for the Loop, as a whole.

Mr. Mecartney: He has given the stations.

Mr. Walker: Yes, but I mean the total including—I mean the total during the years named?

A. I have only the total that——

Q. What is the total on all the figures then, what is the total?

Mr. Mecartney: For all the years or each year?

The Witness: For each year.

Mr. Walker: Yes.

A. For the year——

Q. Suppose you give the totals year by year.

A. Yes. The total for 1897, with the Oak Park eliminated, three months operation, for two roads, there was 2,973,747. For 1898, there was 14,138,946.

Q. That is with the three roads in operation?

A. That is with the three roads in operation. For 1899, 21,304,174. 1900, 28,176,590.

Q. Then the Northwestern came in?

274 A. Yes, then the Northwestern came in. In 1901, 33,299,234. For 1902, 36,351,438. For 1903, 39,529,464. For 1904, 39,087,499. In 1905, 41,761,068.

Cross-examination.

By Mr. Mecartney:

Q. Now, the record that you have of them, you have an actual result, an actual record of the total number of trains that passed over the Loop in 1897, while the roads were—during the time or after the roads were put in operation?

A. I have that record.

Q. The total number of trains, that is naturally based on estimate, is it?

A. No, that is actual record of trains entering and leaving the Loop.

Q. And in 1898?

A. Yes, sir.

Q. And in 1899?

A. Yes, sir.

Q. Now, do you have them in a schedule, the figures there with you?

A. I have not them with me.

Q. Well, if you gave them now, you would simply give them from your having examined the records in regard to them?

A. Yes, and for the period, as a whole.

Mr. Walker: What he wants is what the books show as to that.

The Court: If you can furnish him the information, you may do it.

275 Mr. Mecartney: Yes, bring me a schedule, and I would like to have this witness, or some other official here to verify it.

WILLIAM MCCOY, the plaintiff herein, called as a witness on behalf of the defendants, having been previously sworn, was examined in chief by Mr. Walker, and testified as follows:

Q. Do you own any other property on Van Buren Street, anywhere between Dearborn and Franklin Street, other than your interest in the property in question in this case, real estate, I mean?

A. I do.

Q. Where is it?

A. On the southeast corner of Fifth Avenue and Van Buren.
Q. Did you acquire it in more than one purchase or in one purchase?
A. I did. I acquired it in more than one purchase.
Q. How many?
A. Three.
Q. What are the dimensions of the ground?
A. The first piece that I acquired, about three years ago, fronts 50 feet north on Van Buren by 100 feet deep on Fifth Avenue. The rear 25 feet of that 100 runs east to the alley, running 100 feet from Fifth Avenue.
Q. That is the corner piece you acquired first?
276 A. Yes, sir.
Q. That is the southeast corner, 50 by 100?
A. 50 by 100.
Q. Now, have you acquired any other?
A. I have.
Q. What?
A. I have acquired by lease from the Northern Trust Company the other 25 feet east of the last 25 that I mentioned.
Q. How long a lease was that, a 99 year lease?
A. Yes, sir.
Q. So with your holdings, the lease gives you a piece of property at that corner that is 100 feet square.
A. Exactly.
Q. Facing on Van Buren Street?
A. Yes, sir.
Q. 100 feet?
A. Yes, sir.
Q. Now, when did you get it?
A. The 25 feet east of the 50 on the corner I acquired about two years ago.
Q. The corner 50 feet about three years ago, you say?
A. Yes, sir.
Q. And when, the lease?
A. I think that was about a year ago.
Q. Now, what did you pay——

Mr. Mecartney: Don't answer this.

Mr. Walker:

Q. What did you pay for the corner piece, the first purchased piece, 50 feet, running back 75 feet, and then the 100 foot
277 strip through—the 25-foot strip that runs through to the alley?

Mr. Mecartney: Objected to.
The Court: Objection sustained.
Mr. Burns: Exception.

Q. Now, what did you pay in the second purchase, the 25 feet east?

Mr. Mecartney: I object to it.

The Court: Objection sustained. A certain lattitude I would permit, but not that.
Mr. Walker: All right, exception.

Mr. Walker:

Q. And what were the terms or the annual rental on the 99 year lease for the 25 feet east of that?

Mr. Mecartney: Objected to.
The Court: The same ruling. Objection sustained.
Mr. Walker: Exception.

Mr. Walker:

Q. As to this property, the Elevated Railroad runs right in front of it on Van Buren Street?
A. It turns on the corner of Van Buren and Fifth Avenue from the north.
Q. All right. Now, on the south side of La Salle Street—oh, yes, I see. All right. Well, I think that is all. Wait a
278 minute. Now, Mr. McCoy, take the 25 foot strip that we have called the Jenks strip, the west 25 feet of that property, since you purchased the property with the improvement on it, in 1887, have you sold that?
A. I have.
Q. When?
A. Two years ago last January.
Q. About the time you purchased some of the other across the street?
A. Well, about that time.
Q. Yes.
A. I think I purchased the other a little before.
Q. Now, Mr. McCoy, did you take a lease back for seventy years with the option of fifty years longer for the 25 feet that you sold?
A. I did.
Q. What did you sell it for?

Mr. Mecartney: Objected to.
The Court: Objection sustained.
Mr. Walker: Exception.

Mr. Walker:

Q. What did you contract to pay rent for the 70 years plus the 50 for the 25 feet that you deeded back?

Mr. Mecartney: Objected to.
The Court: Objection sustained.
Mr. Walker: That is the same thing.
279 The Court: Yes. Objection sustained.
Mr. Walker: Exception.

HARRY V. WOOD, called as a witness on behalf of the defendant, having been first duly sworn was examined in chief by Mr. Walker, and testified as follows:

Q. What is your name?
A. Harry V. Wood.
Q. Where do you live, Mr. Wood.
A. Oak Park.
Q. What is your business?
A. Real Estate.
Q. As well. How long have you been engaged in the real estate business?
A. 23 years—well, since 1890, 24 years.
Q. Since 1890, and all of that time in the City of Chicago?
A. Yes, sir.
Q. With what concerns have you been connected?
A. Originally with my brother F. C. Wood, in the Chicago Opera House Block, that is in 1890, and later with——
Q. What was the firm then?
A. It was F. C. Wood & Company at that time.
Q. Were you the company?
A. No, sir, that was my start in the business.
Q. All right.
A. After that I was with the firm of F. E. Ballard & Company, which later became Kennedy & Ballard, and later I was connected with the Chicago Title & Trust Company, as manager of their receivership and trust properties.
280 Q. Now, Mr. Wood, then what?
A. That was back in 1897, and 1898, and after that, I was with Henry A. Knott and Company for seven or eight months, and later I was in business for myself and under my own name, and about 1903 I became a partner of the firm then known as Farnham, Willoughby & Company, now known as Willoughby & Company.
Q. You were a partner in that concern?
A. I was, for something over four years. Since that time up to the first of December last, my business has been conducted in the name of H. V. Wood & Company, I having no partner.
Q. You were the concern?
A. Yes, sir.
Q. And since December last, you have been, as you say, with H. O. Stone & Company?
A. Yes, sir.
Q. In the position that you have named?
A. Yes.
Q. Now, Mr. Wood, were you and have you been familiar with the values and the improvements in the downtown districts of the City of Chicago since 1891 and 1892?
A. Yes, sir.

HARRY V. WOOD, recalled on behalf of the defendants herein and further examined in chief by Mr. Walker and testified as follows:

Q. How long have you been acquainted with the Elevated
281 Railroad systems in Chicago?

A. Since their original construction.

Q. And you knew, did you, where the various down town terminals were before the Loop was built, of those that were running or in existence at that time?

A. Yes, sir.

Q. Have you looked into the question of the effect of the Loop structure, its operation for elevated railroad purposes, this improvement, upon the market and rental values of real estate within the limits of the Loop?

A. Yes, sir.

Q. Have you investigated or made examinations for the purpose of distinguishing between its effect on the streets or knowing its effect on the streets on which it runs as well as its effect on the streets in the territory over which it is not built.

—. ——.

Q. What in your opinion, Mr. Wood, makes the values in the down town district, this Loop District?

A. There are a great many things that enter into the making of values of business property. The location in which the most people are usually found or are daily found as a rule is the point at which the highest value is maintained.

Q. What, if anything, has the accessibility to the property
282 by means of transit to do with that question?

A. A great deal to do with it.

Q. What, in your opinion, is the effect of transit? That is, the carrying of people to and from any point, the transit carrying people to and from a given point on real estate at that point, to which they are carried?

A. Beneficial in practically all cases as far as I can recall.

Q. Now, Mr. Wood, are you familiar with the property in question in this case at the northwest corner of Clark and Van Buren Streets?

A. Yes, sir.

Q. You may assume for the purposes of this question so as to hurry the matter up that the 108 feet on the corner on Van Buren by 95 feet on Clark Street was under a ninety-nine year lease which Mr. McCoy and Mr. Devine got in 1882 and the whole of which he got, McCoy got in the spring of 1883; that the building on this property was constructed and finished so as to be ready for occupancy about the 1st of May, 1884. That is as to the corner piece; that the leasehold—that the first ten years of the ground lease called for a rental of $7500.

Mr. Walker: $7000, and that was for the first ten years. Have you any memorandum in your own way of keeping it of this transaction?

283 A. I have a memorandum that the record shows it was $7000 the first ten years and $8000 thereafter.

Q. Have you also a record which shows the ownership of McCoy in the property, the east 25 feet of lots 20 and 23, that he purchased and have you got the record of that transaction and his sale of it and subsequent lease of it?

A. Yes, sir, I have the——

Q. I take it for granted that you know that. He had the fee of the east 25 feet of lot 20 and 23, 25 by 96.7 upon which the present building was constructed?

A. Yes, sir. I started to say that I don't know what price he paid for that absolutely. I have only my opinion of it.

Q. It is in evidence that he paid $100,000 for the 95 with the building?

A. I understand so.

Q. Owning the leasehold on the other corner at the time of the purchase, but that was in 1887 and the other building was already built up?

A. Yes, sir.

Q. Now, are you familiar with the property and the improvements substantially built on?

A. Yes, sir.

Q. State whether or not in your opinion, assuming that 25
284 feet to the west, the rear end of the lots on La Salle, the use in the owner and the use in the corner in connection with it, whether or not the improvements upon the ground were adequate and proper improvements, had the ground been vacant in 1895, that character and kind of improvement?

A. I think they were fairly so, yes, at that time.

Q. In 1895?

A. I think they were fairly so.

Q. The new constructions on down town property that were being erected at that time such as the Monadnock and the Fisher Building and the Old Colony, what was its class and kind as compared with them?

A. They were a much higher class than this particular improvement, but what I mean to say is that the improvement that was on there in 1895, would hardly justify a wrecking because of more modern types of building in use.

Q. That was your opinion of it?

A. Yes, sir.

Q. But had the ground been vacant, my question is was that then a proper kind of improvement to construct at that period?

A. I don't think so.

Q. Assuming that the property including the 25 feet had been vacant, what, in your opinion, would have been the highest and best use which would give the ground the greatest value in 1895?

285 A. I believe the use to which it was put at that time and today is about as good a use as could be made of it.

Q. How about an office building use?

Mr. Mecartney: Now, that is leading. I object to it.

Mr. Walker: I will put it this way: Is there any other use that would give it as high a value as hotel use at that time?

A. Well, there is some question about that. An office building could have been built there possibly with a chance of better returns but I believe the location was proper for a hotel and store building at that time, stores on the ground floor.

Mr. Walker: Yes. All right. Now, Mr. Wood, have you an opinion,—take the plan for instance, as to what 25 feet, the land was worth per front foot on the assumption that it was in a different owner as distinguished from the corner of La Salle Street or Clark Street in 1895?

A. Yes, I have.

Q. What, in your opinion was that worth in another corner as separate property?

A. About $1800 a front foot. That would be my limit of value.

Q. That is a separate piece?

A. As a separate piece.

286 Q. Would it be worth more or less if it were in conjunction with either corner?

A. Undoubtedly more.

Q. By being capable of use with the corner it was worth more to the corners there than to anybody else?

A. I think so.

Q. You gave its value in the general market as a single piece in your first figure of $1800?

A. Yes, sir.

The Court: In 1895?

A. Yes, sir.

Mr. Walker: But it would be worth more than that price to be used as part of the corner at that time?

A. I believe so.

Q. What, in your opinion, was the property worth, the real estate, that 25 feet, as a part capable of use in conjunction with the Clark street corner, the rest of the McCoy property at that same date?

A. That is a little difficult to answer. I would say that the value was considerably more; probably anywhere from 23 to 24 or $2500 a foot.

Q. A foot?

A. Yes, sir, by using it in conjunction with the corner. That does not always apply, but I think it does in this case.

Q. I am speaking of this case?

A. Yes, sir.

287 Q. It is your opinion it would be worth that much more by being capable of use in conjunction with the corner?

A. I do.

Q. As part of the corner?

A. Yes, sir.

Q. Now, Mr. Wood, what in your opinion, was the fair, cash market value of the real estate, the 108 feet of Van Buren Street, in

1895, speaking now first of the real estate? That is, the ground, I mean, as distinguished——

A. It would be natural to put the front foot value on the Clark Street side, and I would think that value would be about $4000 a foot as a limit of value.

Q. That is, on the Clark Street front?

A. Yes, sir. That would make it about $3500 on the Van Buren Street front as a limit of value in both cases for the land only.

Q. You make that apply, of course, to the entire 108 feet?

A. Yes, sir.

Q. If you added the 25 feet and put the remainder at $4000 that would make the entire frontage on Van Buren less, would it?

A. Yes, sir.

Q. The value that you put is $4000 on Clark Street?

A. Yes, sir.

Q. And the difference in the length on Van Buren in your opinion, makes it worth $3500 on that front?

288 A. Yes, sir.

Q. Now, Mr. Wood, as part of that land, in 1895, assuming that the building on the Clark Street front was built in 1883, and the building on the 25 feet was built in 1884, or '5, one being some 12 years before 1895, and the other some 11 or 12 years, what were they worth in the market, as part of the real estate in 1895, at the time you put the value that you do on the land?

A. Well, I can give but an approximate value of the two buildings. Separately, you mean?

Q. Yes, sir.

A. I would think that the inside 25 probably would have cost about $40,000 to build and had depreciated, perhaps to 32 or 35; maybe as low as 30. I guess that about 32,000 up at that time, as the full value of the building, and the corner building, I would consider worth a little less than three times that value with a depreciation proportionate.

Q. That is a little less than ninety; three times the other building.

Mr. Mecartney: Let him answer, please.

The Court: 32, he said.

A. I would assume that the corner building is about three times as large or a little more than three times as large and prob-

289 ably cost a trifle less than three times as much and the depreciation in the time would have brought it down to 85 or $90,000, somewhere in that vicinity.

Mr. Walker: Mr. Wood, taking that 25 feet with your values of the buildings—I am not sure you said 32 and then made it probably 30 on the building—which figure did you intend to be your opinion of the value of the building in 1895, on the 25 feet?

A. I think possibly about $32,000. That is very rough. That is about the natural depreciation.

Q. Now, taking that building into consideration at your figure and the value of the ground to be used with the Clark Street front.

age, and the value that you put on the building, and bearing in mind that as to that 25 feet it was a fee, what do you make, if you have any opinion, the value of the fee first on the 95 by 100, on the ground. Of course, they had no interest in the building, but on the ground in 1895, say, what was the value of that fee?

Mr. Walker: Now, they had a 99 year lease on there, Mr. Wood, which in 1893, *page* $8000 a year. You would capitalize that on a five per cent. basis, and what would you say at that time was the value of the chief interest, the Keep interest in the property?

A. The Keep interest in that case, I would consider only—

290 I would consider about a four per cent. basis.

Q. In 1895?

A. Well, subject to the leasehold, if they were going to sell it.

Q. All right, whatever your motive is. Then what would you say the fee was worth, $8000 being the rent it produced?

A. Two hundred thousand dollars.

Q. Now, the balance of the interest, you understand is entirely in Mr. McCoy?

A. Yes, sir.

Q. What, in your opinion was the value of Mr. McCoy's leasehold to the ground, and then add your ninety thousand or whatever it was, eighty-five thousand and the building so as to get McCoy's interest in the Clark Street front?

A. I would think the value of the leasehold was about as valuable as the fee. In other words, the value of the fee was about $200,000, incumbered with that lease. The property is unincumbered would be worth about $400,000.

Q. On Clark Street?

A. About $400,000 a front foot. I am figuring the Clark Street frontage because it is natural to figure it that way; would be about four thousand dollars a foot which would be——

Q. That would be 380?

A. $380,000, yes.

291 Q. 380?

A. About 180 for the fee and about 180,000 for the leasehold interest in the ground, and about $200,000 the value of the fee.

Q. On the property?

A. Yes, sir.

Q. To that amount as the value of the leasehold you would add to get Mr. McCoy's interest the 90,000 for the building?

A. Yes, sir.

Q. At that date?

A. Yes, sir.

Q. Now, Mr. Wood, have you an opinion as to what was the effect of the construction of the improvement in Van Buren Street, the railroad in this case, together with its operation, what that effect was upon the market value of the property in question in this case, including the 25 feet that McCoy had the fee of as well as the leasehold interest in the corner, what, in your opinion, do you think was the effect?

A. I think it was beneficial.

Q. What do you mean by the term beneficial?

A. I mean that the property was worth more with the railroad in the street and in operation than it was without it there.

Mr. Mecartney: Was that question confined to October, 1897?

Mr. Walker: Yes.

292 A. I assume you mean after the railroad was used, of course, was in operation?

Q. Yes. I included that. I did not ask down to date. Oh, no. Mr. Wood, you may take it, I think for an assumption that the railroad was built in the street, or begun to be constructed at that point. What is the earliest date here?

Q. Now, the road was put in operation, all of it, prior to the 1st day of November, 1897. That is, the Northwestern road was coming down. They didn't come until 1898, but the other three roads used the Loop.

The Court: The Northwestern didn't come down until 1900.

Mr. Walker: Until 1900. Now, bearing in mind that date, will you please tell me what in your opinion this property was worth, the McCoy interest as heretofore defined in 1897 and '8 after the road was put in operation?

A. I would place the value of the Clark Street frontage at $4,500 a foot and the value of the Van Buren at $4,000.

Q. At the dates named?

A. Yes, sir.

Mr. Mecartney: I think I will have to ask for a closer date, 1897 or '8?

A. 1897, after the road was built.

Mr. Walker: He puts it in 1897, after the road was built and in operation.

293 A. Yes, sir.

Q. To what, Mr. Wood, do you attribute the increase?

A. It was partially from the natural increase of the property. Partially from the advent of the new transportation placed in the street bringing large numbers of people to that locality, which formerly were not easily brought there.

Q. By what transportation, are you speaking of?

A. I am speaking particularly of the elevated loop. The benefits came from both sources, from the natural increase and from this special benefit as I would call it at that time, of the elevated railroad which brought people to that point.

Q. Have you an opinion as to what proportion of the advance if you have an opinion, was due to the elevated railroad, the loop in the street?

Mr. Mecartney: I neglected on the objection to the last question, to make my record as to going into the question of travel benefits.

Mr. Walker: I am quite willing that it should be understood

with Mr. Mecartney, and I thought we understood it before, that was the proposition all the way through.

The Court: Yes, it may be considered that you object to that being considered as an element of benefit in the case, not
294 a special benefit.

Mr. Mecartney: The objection may be considered as made and overruled by the court, and the objection may be considered as made right along?

Mr. Walker: Now, will you please answer the question.

A. It is hard to define just what proportion of the benefits or advance might arise through the natural increase by reason of the increased population of the city. I would think one-half of the increase, at least at that time.

Q. Was what?

A. Was due to the operation of the Elevated Loop railroad bringing people to that point.

Mr. Walker: He criticises something that I added to the question. The question was not complete. When was the effect on the market values first begun to be felt?

A. I think prior to the actual construction of the Loop, there was some increase in value which was in anticipation of the coming of transportation which they had not had in the past, a better class of transportation. I think that was anticipated quite largely before the road actually began to operate, so that the advance in values was rather gradual, and they did not jump at any time from one price to another, but gradually increased.

Q. Now, Mr. Wood, in giving your answer as you have to this question, does that apply to the 25 feet that is used as a
295 part of the property on the corner as well as the Clark Street frontage?

A. Yes, sir, I think the benefits are about equal proportionately.

Q. Now, I want to ask you, what, in your opinion, was the value of the land after the road was constructed, of the Van Buren Street 25 feet where the fee was, as distinguished from the 95 feet on Clark Street where you have given the value?

A. Entirely separate from any connection with the corner.

Q. First?

A. Yes, sir.

Q. After the road was in operation?

A. I would say it would be something over a trifle over fifty thousand as compared with forty-five thousand as the value before. Forty-five thousand is the value at $1,800 a foot and I would say there was about 14 or 15 per cent. advance which would bring it up to something over fifty thousand.

Q. At the last——

A. At the time the railroad was in operation.

The Court: At 1,800 it would be 45?

A. Yes, sir.

Mr. Walker: A thousand dollars would be 2,500 and at 1900——

296 Q. Then we will pass it for something else. Now, assuming the road is there and we are in 1897; at that period would you say those buildings were adequate and a proper improvement for the land after the road came in 1897 and '8?

A. I can answer that by saying that at that time, if the property were vacant it would be unwise to duplicate the buildings that are there now. I doubt if it would be wise to demolish the buildings just at that time to erect a new structure. So there was some temporary value in them anyway.

Q. When you speak of the deterioration in value, I suppose you had reference to the difference in age of the buildings?

A. Yes, sir.

Q. Was any deterioration in value due to the Elevated Railroad in Van Buren Street?

A. No.

Q. To the buildings?

A. I didn't consider it in that light at all. The actual deterioration of the buildings. I would use that as a whole.

Q. Now, Mr. Wood, has there been any—of course, this will be leading; it looks leading to me anyway, but it is a question the Court said I might put: What I want to get at is this; you have given a figure of the value of this property before the Loop came. If there has been any change in the value of that property—you have already testified to a change since those dates, what has
297 it been? That makes it not leading. That is all. I mean by that—your Honor sees my meaning.

The Court: I think I understand.

A. I think the value has been increased right along. This has advanced. At no time has it gone backward. It has advanced and advanced materially.

Q. Has there ever been a time, in your opinion, when it was worth less—McCoy's interest in the property and land—and was before the Elevated road was constructed?

A. Decidedly not less at any time.

Q. What has been, if any, the percentage of increase?

Mr. Mecartney: That is objected to.

Mr. Walker: Well, I will say up to 1895, then.

The Court: If any?

A. I think the benefit there——

Mr. Mecartney: I, of course, object to any evidence subsequent to the time of putting the road in operation. I understand your Honor has ruled against me.

Mr. Walker: Limited to 1905, as I understand it.

The Court: Limited to 1905.

A. I think the increase has been seventy, or at least seventy per cent. I think that is about uniform with Fifth Avenue, and that is about my judgment in both cases.

298 Q. When you say seventy per cent., do you mean 70 per cent. in total or how?

A. Well, I don't mean to compound that 70 per cent. I mean

the first five years I believe that property increased about 35 per cent. In the ten years it increased about 70 per cent. I think in 15 years——

Mr. Mecartney: Oh, I object. Hold on.

The Court: Yes. What was the figure for ten years?

Mr. Walker: 70 per cent.

The Witness: That is approximate, of course. I cannot give——

Mr. Walker:

Q. What proportion of the increase up to 1905 was due in your opinion to the construction and maintenance of the elevated railroad in Van Buren Street, if any?

Mr. Mecartney: Objected to as immaterial. Impossible for anyone to tell after market elements, business conditions and finances have all been——

The Court: If he can tell. He is subject to cross-examination.

Mr. Mecartney: I know, but this is the ground of objection.

The Court: That is all right. He may answer.

299 Mr. Mecartney: Exception.

Q. What was the outlet to the south then of the property north of Van Buren Street between the river and the Lake, the river on the west and the lake on the east and the main branch of the Chicago River on the north?

A. I will have to get that question a little clearer in my mind. The outlet—if I can have that question, maybe I can answer it better.

Q. I mean the streets that were usable upon which people could have built, like Michigan, Wabash and State. The rest of it the railroads took. I want to show that territory has only two or three streets to let them go to the south on?

A. Well, there was Michigan Avenue, there was Wabash and State Street. The next south of Polk Street was Clark, and Federal and ran further up, La Salle Street, Sherman Street running from Van Buren south to Harrison. Clark Street running through further south.

Q. And the intervening lines between State and the river occupied by steam railroads?

A. Much of it.

Q. At the point you have named?

A. Much of it.

Q. Now, what was the effect, if there was any, of this loop in concentrating values or in not concentrating values in the district bounded by it?

Mr. Mecartney: I think I will object to these leading ques-

300 tions.

The Court: What is the question?

(Question read.)

Mr. Walker: No, it is not a leading question. My purpose is to show that the loop put a band around this district.

The Court: I understand your question.

Mr. Walker: That is only for bringing up the subject. I do not want to give the answer.

Mr. Mecartney: You may as well give it now. He can answer it.

Mr. Walker: All right, go ahead.

A. Why, the property within the loop was more benefited than the property on the outside of the loop, unless you might exclude the property on Michigan Avenue, which was close to it. Property to the south was not benefited—south of Van Buren Street was not benefited to the same extent, or property west of Fifth Avenue, as the property within the loop.

Q. And when you use the property within the loop, what do you include?

A. I include from Van Buren Street north.

Q. Well, with reference to Van Buren Street?

Mr. Mecartney: I object to interrupting the witness.

301 A. I have reference particularly to the property which is within. Of course, Van Buren Street was benefited on both sides of the street, and so was Fifth Avenue, the greater benefit falling within the loop, because the natural route of the people was to go to the center and not to the outside. That is the theory of it.

Mr. Walker: Now, Mr. Wood, what has been the course of development within—of the use of property and of improvements since '97 within as distinguished from without the loop, I mean on the south side, in the territory named?

Mr. Mecartney: I object to the question.

The Court: Well, within the original period, that is, within the period.

Mr. Walker: Well, I will say up to 1905.

Mr. Mecartney: Plaintiff objects and is overruled and exception.

A. The improvements were much better and much more rapid within the loop than without.

302 Cross-examination.

By Mr. Mecartney:

Q. What down town piece of real estate have you sold prior to the year, say 1897?

A. None.

Q. What down town piece of real estate did you have charge of as to the management of rents, management or collection of rents, prior to 1897?

A. There is no properties that I had the management of prior to that time in the central business district.

The Court: What?

A. I had no property prior to 1897 where I was manager of the property.

Mr. Mecartney:

Q. What down town lease hold, long term lease hold, if any, did you sell prior to the year 1897?

A. I made no sales or long leases prior to 1897 personally.

Q. Would you consider yourself competent to pass upon down town values in that situation?

A. Yes, sir.

Q. Would you consider yourself more competent to pass on the value of McCoy Hotel property prior to 1897 than one who had the same business capacity and the same experience as you and who had engaged in a great number of down town transactions, sales and 99-year leases, and the making of down town loans prior to that time?

Mr. Burns: I object to that.

The Court: Well, I think that is passing on his qualification. That is for the jury to determine and not for him.

Mr. Mecartney: I think when we call witnesses and a great point is made——

The Court: It is a question of argument, Mr. Mecartney, to the jury.

Mr. Mecartney: I wanted to make that clear.

The Court: I sustain the objection.

Mr. Mecartney: Exception.

303 Q. In what way were you connected with the Chicago Title & Trust Company?

A. I had charge of their receivership properties and their trust properties.

Q. What month in the year 1897 did you commence business relations with that company?

A. I think I stated in '97 or '98. It seems to me it was either the fall of 1897 or the early spring of 1898, that is as near as I can recall.

Q. How long did that relationship continue?

A. A little less than three years.

Q. What was the first down town property which you ever sold?

A. Well, I made several sales, I think, and some leases.. I would have to refer to my minutes, in order to save time. There don't many of us make a great many long leases and sales. In 1905—I can give them to you, if you wish a list of that property, of leases and sales, 99-year leases.

Q. In 1905?

A. I can give you a list of long leases and sales I have made personally.

Q. I have not asked you to do that yet. Will you tell me what was the first down town sale or long term lease which you consummated as a real estate man, giving the year first and then the property?

A. Oh, I could go back to the time when our office made a 99-year lease right adjoining this street, right near Van Buren street, away back in 1892, but individually the first one that I first actually made or leased——

Q. One moment. I move that the ans-er thus far be stricken out.

The Court: It may be stricken out. You differentiate do
304 you, between what he did himself and what his office did?

Mr. Mecartney: All I am calling for is what he himself accomplished as a real estate man.

A. Yes.

The Court: I see.

Mr. Burns: You mean through his firm or through himself individually?

Mr. Mecartney: Well, I am asking for himself, his own work.

A. In January, 1905, was the first—was the sale of the building leasehold at Michigan and Madison. That was the first deal that I think of.

Q. The rate of interest—what knowledge have you as to the rate of interest paid on down town leases in the early '80s, that is the rate at which down town leases were capitalized or were made on the basis of values of the fees in the '80s, you have mentioned.

A. Well, I know that even up to the time that I was in the business, it was pretty close to 6 per cent. basis and the transactions all along suggest that.

Mr. Mecartney:

Q. Were you in the real estate business in the '80s?

A. No sir.

Q. Did you have any experience in building buildings in the '80s or the early '90s.

A. Not office buildings. None at all in the '80s.

Q. What building did your firm have charge of downtown prior to 1895?

A. The firm I was with in 1890 were not down town real estate men. As a matter of fact, they did take a lease in 1892——

305 Q. I am not asking you that. Please repeat the question and I will ask the witness to confine himself to that question.

A. They had no buildings down town, office buildings or anything of that nature, but they had some properties in the early '90s.

Q. If you are through now I will ask the stenographer to read the question to the witness.

(Question read.)

Q. Or name one?

A. I do not recall that they handled any down town properties at that time as agents.

Q. How did you get at the value of a down town leasehold interest, what method do you employ to get the value of a down town leasehold interest?

A. Well, at the present time it is customary to use a four per cent. basis of computation, although even at this time where a four per cent. basis is used, I think that it is common to use a rather high cash value of the ground, and that was—and still a higher rate was really used in years gone by.

Q. Now, I refer to the process, not to the rate.

A. Well, if you wish me to explain, if property was leased at $12,000 a year it would be four per cent. on $300,000.

Q. Then you take practically first the value of the ground and put a fairly full valuation on the ground and take four per cent. of that and get what would be approximately a fair yearly rental?

A. Yes, sir.

Q. And in the '90s, say 1895 you would use probably 5 or 5½ per cent?

A. I think so if you use the fair cash value of the property.

306 Q. Now then, when there is an existing leasehold on a down town piece of real estate, as an equivalent method you could take the value of the ground and existing leases, for instance, that run a number of years, and the ground and buildings, and then subtract from that what the fee is worth, having regard to the annual rental which is paid for the fee and the fact that the fee has nothing but that?

A. Well the fee——

Q. For instance, I cann illustrate. Do you understand the question? I do not know but my question is a little involved.

A. It may be but I can answer that by stating that there are cases where leaseholds are worth great deal more than the fee in the land because of the low rentals obtained.

Q. For instance, take in the case of the McCoy leasehold. You found a value on the leasehold property 108 feet on Van Buren at $3500 a foot, taking your figures, and give a total valuation on that ground of $380,000, or thereabouts, wasn't that it?

A. My value was $200 on the—Yes let us see, $4,000 a foot. Yes, I think it is $380,00-.

Q. $4,000 a foor on the Clark street frontage?

A. And $3500 on the Van Buren.

Q. That would make $380,000 for the grounds?

A. Yes, sir in 1895.

Mr. Walker: That is the Clark Street frontage, not the 25 feet.

Mr. Mecartney: $380,000 for the leasehold ground, as we

307 will call it.

A. Yes, sir.

Q. You add to that about $90,000 for the value of the building, which makes $470,000?

A. About that figure, I should say.

Q. Now, then, the fee owner then having only a right to $8,000 a year, you capitalized that at four per cent, making $200,000 for his fee interest, did you not?

A. That is about what he would have to sell it for if he were to sell it.

Q. On a four per cent. basis?

A. Yes, sir.

Q. Then if you subtract that from $470,000 it leaves but $270,000 as the value of McCoy's leasehold, exclusive—the value of McCoy's leasehold on the corner?

Mr. Walker: Including the building.

A. Including the building.

Mr. Mecartney He will say that, "including the building." Including the building. That is the way you give it?

A. That figure is right, yes.

Q. You add $50,000 for the ground and the 25 feet as a part of your valuation, plus $302,000, makes $352,000 as the value
308 of his entire holding there, leasehold and the 25 feet?

A. I assume that figure is right.

Q. Now, on what, if there would be a damage from the construction for this railroad in the street for railroad purposes, on what would the damage fall, the leasehold or the fee?

A. On the leasehold.

Q. Does all the damage——

A. That is in the case of the corner piece. Of course the other was a fee.

Q. Yes, I am speaking only of the leasehold property. Then the amount of the damage, if any, or the benefit, if you term it of any, to the entire building as if it were owned in fee, is just the same in substance as the damage or benefit to McCoy's leasehold, is it not?

A. In other words, there is no additional damage to the owner of the fee. In that case I would say there was no benefit or damage, because the owner's—the income of the owner of the fee was established for a great period of years and therefore he was affected neither one way nor the other, materially.

Q. In other words, in a case of that kind, unless the structure, or whatever the thing under consideration is or was, reduced the value of the entire building so much as to impair his security, no damage would fall on the owner of the fee?

A. I think so.

309 Q. In other words, in estimating the effect, market effect on McCoy's leasehold, you would arrive at it by simply considering the effect upon that ground and building as if it were owned by one party?

A. Yes, sir.

Q. In considering the question of the effect on market values on property from a public work, is it your judgment that all market effects are of the same kind, or whether there are different classes of market effects?

A. They are not all uniform, no.

Q. Some are direct and some are indirect, are they not?

A. I would think so.

Q. The effect of a structure in the street which clouds up, which beclouds or darkens windows, is that a direct or indirect effect?

A. It would be detrimental.

Q. Would you call it a direct or indirect effect?

Mr. Walker: I move to strike the answer out as not being responsive.

Mr. Mecartney: Never mind, I will let it be stricken out without arguing.

Mr. Mecartney: Would you call that a direct or indirect effect?

A. Why, I would call that a direct effect.

310 Q. The passing of trains upon a structure close to windows——

A. As a matter of fact that answer could be either way and still be proper. It could be indirect or it could be a direct effect, an indirect effect, because it called for something in the future. In itself, it would be a direct effect, so that either yes or no might apply to that question.

Q. Then I will let it go at that. What would you say as to the noise and obstruction of light that occurs from passing trains near the windows of a building?

A. In itself it would be detrimental.

Q. Would it be direct or indirect effect?

A. It might be—depending on how you put it.

Q. How will you put it?

A. I would say it was a direct effect so far as the disadvantages from that alone are concerned, but if they were coupled with something which was beneficial, it would be directly the opposite answer.

Q. I am asking you without coupling it with anything. That particular element, is that a direct or indirect effect?

A. By itself it is a direct effect, but, as I say, I cannot answer that question.

Mr. Mecartney:

Q. Now, if access to a building is impeded by the way of upright posts, for instance, standing near the doorway, has that a di-

311 rect effect upon the market value, or indirect effect, in your judgment, or can you answer that yes or no?

A. My answer would be the same as the last answer.

Q. Now, then, repeat it then.

A. That in itself——

Q. Taking it alone?

A. —would be detrimental, taking it alone.

Mr. Mecartney: The question of the obstruction of light and air, or reduction of light and air that may come to premises from a public street, and the effect from noise that may come from the operation of the structure in a public street, and the effect upon having access impeded to the premises, would you say that it is a direct or indirect effect upon the actual use of the premises?

Mr. Walker: That is objected to.

The Court: He may answer.

Mr. Walker: Exception.

A. My former answer, I think, would cover that as fully as I can answer it.

Mr. Mecartney:

Q. That if you consider it alone, it would be detrimental?

A. Yes, sir.

Q. I will pass that. Now, in considering the effect of this elevated structure, or the building of this elevated structure for

312 railroad purposes, you have spoken about the bringing of public travel on to the street. How do you figure that element

in figuring out its market, or effect upon the market value? Would you call that a direct or an indirect effect?

A. I would say that was a direct effect upon the value of the property, yes.

Q. Now, then; what does it come from?

A. You could call it indirect. The people went—if the people did not use your property or go up or do anything else, the bringing of the people there is a direct effect in the sense that that is the reason the property is in my judgment benefited, the fact of their having been brought there. In that case, it was a direct effect. It is an indirect effect in the sense that if they are there they will use your property, they will rent your offices and so forth, so I think my old answer will cover that pretty well.

Q. You think your former answer would cover that?

A. It seems to me it would. You can call it direct or indirect. It would depend upon the light in which you viewed the question.

Q. I would like to ask you another question; the benefit to the property in such a case, if I understand you, to its market value, comes as you say from the fact of bringing people to or by the
313 property who will do business there, purchase goods there and so forth, and so on?

A. In that sense——

Q. And through that increasing rental of stores—or rather through that increasing of the amount of business done, and through that increasing the rental of stores and thereby increasing the market value of the property, that is about the way that element works, isn't it?

Mr. Mecartney: Does not the effect upon market value because of bringing additional people to a certain point by reason of which more business is apt to be done and rentals increased, depend largely upon the conduct or management of the particular business, in order to get the particular market effect?

A. It would have a bearing upon it.

Q. Then, the market effect upon the building from the construction of this loop cannot be conjured up or estimated without taking a lot of other elements into consideration?

A. It would be hard to.

Q. Then it was hard for you in estimating the question of market benefits that would come from increased travel there to make your estimate in this case?

A. It would have to be an estimate. It could not be figured out definitely by anybody.

314 Q. Wouldn't it be more of a guess than an estimate in your judgment?

A. No, I think not. We——

Q. Now, estimated, how much was it that runs from that one element of added crowds being brought there by this elevated railroad?

A. I stated in my judgment, the increase in value was about seven per cent. per annum, and that about one-half of that was because of

access to the property gained from the construction and operation of the Elevated Railroad.

The Court: When did the seven per cent. start?

A. We will say it started in 1895. Probably it started in 1894. I cannot tell exactly.

Q. And you say about half of it was due to the Elevated Road?

A. I would think about half of that increase was due to the Elevated Road?

Q. I asked you a little while ago what was the instant market effect and how you valued it, that came to this property in say, November 1st, 1897, from the fact that the road had been completed and in operation. Have you any such estimate now to give?

A. I said I could not estimate any instantaneous value there.

Q. Assume it then, when did it begin and when did it stop?

315 A. I do not think it has even stopped.

Q. When did it begin?

A. I would say prior to 1895. I think sometime prior to 1895, and I do not know how much prior to that time, and I would say in 1894 and 1895 that property was increasing on the basis of about seven per cent. I think the railroad had about one-half to do with that increase of seven per cent. and I think it has continued right along, and I guess it may have continued right up to date relative to present values——

Mr. Mecartney: Suppose the Elevated Road was not constructed until 1896, and the construction was not commenced on Van Buren Street until 1896, how do you attribute, or do you attribute the seven per cent. increase in value to be due to the Elevated Road prior to that time?

A. I consider that about one-half of that increase in value which I estimate at about seven per cent. was due to the operation of the Railroad. Part of that was anticipated prior to the time the Railroad was ever built there.

Q. Prior to the time it was commenced to be constructed?

A. Yes, sir. As soon as people knew that that was coming in the street, I think property stiffened up in price. Holders were not so willing to sell.

Mr. Mecartney: Well, I withdraw it. Mr. Witness, estimate for us in dollars and cents the amount of increased market value

316 to the McCoy Hotel property which had accrued to it by virtue of that—the element of travel—increased travel alone, up to November 1, 1897?

A. Oh, that would be very difficult. I would not attempt to estimate in actual dollars and cents. You can arrive at that approximately from what you know has been the effect upon rentals, the effect upon the ownign of property, but you cannot get down to actual dollars and cents as a benefit of the travel——

Q. You cannot get down to dollars and cents on that element, can you?

A. Not absolutely; you can approximate it in a general way.

Q. Give us then your approximation in dollars and cents.

A. I think the travel benefits there were about one-half of the increase in the value of that property.

Q. Then, taking it that the advance in the value of that property for three or four years prior to that was twenty-one per cent. or seven per cent. a year, you would say that the benefit from the Elevated Railroad travel was three and one-half per cent. for these three years, or say, ten and one-half per cent?

A. What three years are you referring to?

Q. Prior to November 1st, 1897; that commenced in 1894 when you said——

A. I think so, about one-half, approximately one-half.

317 Q. Now, if the value was say $400,000 of the leasehold, there would be an accrued market benefit up to November 1st, 1897 of something like $40,000 or $50,000?

A. I am using the land. The building has depreciated. The land—seven per cent. increase in value is upon the land. I have stated that the buildings would depreciate in value by reason of the age.

Q. The per cent. of increase, would be about $40,000 from 1894 to 1897, ten per cent. of $400,000.

A. If those figures are right.

Q. I do not say that they are right.

The Court: He is just taking an arbitrary figure.

Mr. Walker: He might take $4,000,000.

A. Three years, it would be twenty-one per cent. of the value of the ground at the early date.

Q. $40,000 to $50,000 of increase then, and you would say that was due to the element of added travel, and three and one-half per cent. a year from that time on?

Mr. Mecartney:

Q. Now, Mr. Wood, please estimate from your consideration the estimate of increase to travel benefits which you have estimated at three and one-half per cent. per year, or something like that, running through the series of years, and tell us what, in your judgment,

318 is the effect, or was the effect, on the market value of that McCoy property, arising from the elements of the construction of the Road and its operation, and excluding from consideration anything in the way of increased travel facilities.

Mr. Walker: That is objected to. I do not understand what has become of the photographs first.

The Court: He may answer.

A. Detrimental.

Mr. Mecartney: Detrimental. Will you estimate that for us?

A. It would be very difficult to estimate in dollars and cents what the detriment that would be. I think one man's judgment of that is about as good as the next, what damage it would be to property to have a structure in the street and the damage caused by the diminution of light, and the noise.

Q. Shall we call the next man, or will you tell us?

A. I think that any man—one man can estimate that as close as another, whether he be a real estate man or—I do not know that is so either. I think I can see a decided damage, but I cannot figure it in dollars and cents.

Q. Can you figure it in percentage?

A. No, I would simply say it would be detrimental. I could not state to what extent. It would depend entirely on what the property was used for in one case. It would depend upon the class of the property and a dozen other things, probably.

Q. Does the effect upon the market value depend upon
319 those other things, upon what the property is used for and all that?

A. Yes.

Q. Did you take all those elements into consideration, this location and so forth?

A. I did.

Q. I am asking you to take into consideration just those same things and to estimate in dollars and cents or by percentages the market effect upon that property of that structure and its operation for railroad purposes?

A. I still could not do that, probably, much better than anybody else.

Q. I am not asking you to do it better than anybody else, or even as good as anybody else. Will you please estimate that?

A. I cannot estimate that.

Q. But you can estimate the effect of bringing a lot of people as you imagine——

A. I would place one benefit on Van Buren and another on Wabash.

Q. You mean as to bringing people there?

A. As to the amount of benefit secured through the loop.

Q. Did you ever count the number of people that came by these premises in these years when the Loop was first built?

A. No, sir.

Q. Did you ever count the number of people that went by before?

A. No, sir.

320 Q. Did you ever count the number of street cars or the number of passengers using them that went by before or not?

A. No, sir.

Q. Did you ever count the number of people that were brought to the South Side and the old terminals of the various systems?

A. No, sir.

Q. Do you know how many there were?

A. No, sir.

Q. Did you ever try to find out before you made your estimate here of travel benefits of increased travel benefits to this property?

A. My common knowledge of conditions would cover that.

Q. Did you ever make any effort to find out?

A. I did not make any special effort, no.

Q. Well then, how can you tell the effect upon the market value of this property by increased travel, if you never made any effort to find out how much the increased travel was?

A. I think I know about what the increase in value was, what it has been over the entire period of years and I——

Mr. Mecartney: And——

The Court: Proceed.

A. I think I can judge what proportion of that benefit was due to the people carried to the vicinity and what was due to the natural increase by reason of increased population.

Mr. Mecartney: I move that the answer be stricken out.

321 I have asked him how he can estimate the effect from increased travel, if he did not make any effort to find out how much the increased travel was.

Mr. Walker: He told you in his answer.

Mr. Mecartney: Is that the best answer you can give?

A. My general knowledge of the conditions, I think, would make me competent to give a fair estimate of the value from that standpoint.

Q. From increased travel?

A. I think so.

Q. But could you do it any better without knowing what the increased travel was, than if you did know what it was?

A. I do not know whether if I knew the actual numbers, whether it would have very much effect upon me, because I know what the general conditions are. I know what the increase has been and I have my own ideas as——

Q. And you do not need to know what the factors are to arrive at the result?

A. I do not know whether there was one million, or one million two hundred and twenty-five, or one million two hundred and fifty, but the effect upon that property I think I know, without those figures.

Q. We will assume for the present that you think you know that. Do you feel that you can give an estimate then as to the result of a particular element in the market value coming from increased travel, without any idea of how much increased travel

322 there was?

A. I think I have a decided idea. If I did not, I could not estimate at all.

Q. I am trying to show that you cannot estimate at all. May I ask you now how many people in your judgment came from the South Side when the Loop was constructed who would not have come there if it had not been constructed, have you any idea on that subject?

A. As to the actual number of people, no; I know what rents were.

Q. You know what rents were?

A. I think I do.

Q. Do you know what the condition of the times was?
A. I do.
Q. Do you know the financial condition of the times, what the financial condition was in 1898?
A. I think I know the financial conditions from 1892 up.
Q. From 1892?
A. Yes, sir; 1890, I know the financial condition.
Q. I am talking about 1898.
A. No, the panic started in the Fall of 1893 and in 1894 it was at its worst, in 1895 perhaps. By 1898 things had begun to improve decidedly.
Q. Do you remember what particular event happened in the financial world?
A. We had a war at that time.
Q. What?
A. I think the Spanish war was in 1898.
Q. That did not effect finances, did it?
323 A. It might have had some effect.
Q. Do you remember the Flower boom in stocks in 1898?
A. I think it was about 1898, the Northern Pacific went up about three or four hundred per cent.
Q. That marked the restoration of business, the restoration of confidence in business throughout the entire country, did it not?
A. Things began to improve by 1897. By 1898 there was quite a settled improvement, and by 1900 business was well under way. That was my recollection of conditions.
Q. Taken as a rule, real estate goes up gradually and goes down gradually?
A. Yes, sir.
Q. But does not a panic like 1893 instantly make it dull and instantly depress, to some extent, real estate generally, didn't it?
A. It had that effect. There was no depreciation. There was no time in the worst panic we had that the average price of central business property decreased a dollar. It was really increased.
Q. But wouldn't you say in the panic of 1893, the widespread panic throughout the country, didn't it have some instantaneous depressing effect upon the market of real estate?
A. It had a depressing effect; no question about it. Whether it was instantaneous or not, I am not prepared to say.
Q. Wasn't it practically within a few months, instantly or within a few months, didn't it depreciate the value of property
324 throughout the City, ten per cent. at least?
A. I do not think there was any depreciation, if you term depreciation the price at which you could either lease or buy downtown property; that did not happen.
Q. Within a few months after the panic of 1893?
A. In every section of real estate I can think of except a few, one of them being the Central Business district of Chicago.
Q. Would you say that within a few months after the Panic

Real estate went down outside of the downtown district in Chicago as a general thing, real estate depreciated, at least, ten per cent.

A. Yes, more than that.

Q. Wouldn't you say after the Flower boom within a few months that it had gone up or increased ten per cent?

A. I think the increase in 1897, 1898, 1899 and 1900 probably would average somewhere in the neighborhood.

Mr. Walker: Are you talking about Central property now?

Mr. Mecartney: No, not central.

A. I supposed you were talking about property, central business property, generally.

Mr. Mecartney: I am talking about——

A. I am not prepared to say what the property increased throughout the country. I think things improved, what amount I could not say on the average. I speak of the Central business district because that is the territory with which I have been more
325 familiar. My judgment of that might be expert, and not at all expert when we get outside of that.

Q. Had the general market in Chicago increased from 1897, 1898, 1899, practically ten per cent. a year, or had it——

A. Possibly it had.

Q. Well, the increase in the market value of this property coming from the element of increased travel or increased travel facilities furnished by this Loop road—what particular travel did you consider?

A. I do not know just how to answer that. It is the bringing of the people to that point. You mean what people were brought to that particular point?

Q. Do you mean that you considered just all the people that were brought by the Loop Road to this McCoy Hotel property?

A. Well, I considered the additional numbers that were brought by reason of the construction and operation of the Road.

Q. Additional what?

A. Additional numbers of people to the numbers that were previously brought to that point, the accessibility of the property, the numbers of people that came there by reason of the accessibility, I should say, was the cause of the beneficial effect that I have stated.

Q. When you say that you considered the numbers of people brought there, you considered the number that would be brought additional to, or in excess over what?

326 A. Over those that would come there without the Road being there, that would naturally come to that property, if it were not for the operation of the Elevated Road.

Q. Of the Elevated Road, or roads?

A. Well, roads; all of them.

Q. All of them?

A. Yes.

Q. You considered all the travel brought to the Loop from all the Elevated roads?

A. Inasmuch as they have the Loop there and they all went all

the way around the Loop, you could consider them as a part of it, yes.

Q. Did you then so consider all the travel which the Loop brought there?

A. I considered the benefits derived by reason of the number of people brought unto Van Buren Street and especially to that property, La Salle Street, by reason of the operation of the Loop, just as it was operated.

Q. Did you count your effects or estimate your effects from the entire number of people that were brought there by the Loop and who got off the Loop and got on the Loop?

Mr. Walker: What do you mean by that?

The Court: Do you mean at this point or——

Mr. Walker: Do you mean all the stations?

Mr. Mecartney: No, I don't mean the Loop generally; I mean to say, did you consider the additional travel which the Loop brought alone or the travel over what the Elevated roads had brought
327 before?

A. Yes, I considered the benefit derived by reason of this particular Elevated Loop which was the means of bringing additional people to this particular street.

Q. And you did not have any estimate of the number of additional people?

A. I do not know. I never counted them.

Q. Just say Yes or No?

A. No.

Q. And you did not have any estimate of how many were using the Elevated Roads to get to the South Side before that time?

A. I never counted them.

Q. You have no such estimate?

A. No, sir.

Q. And you have no estimate and have attempted to make no estimate of how many passed this particular point that came from Elevated Roads established before the Loop was constructed?

A. No, I have not any estimate.

Q. Have you any estimate of how many of those people were fed to the Elevated Roads by cross-town lines in different parts of the City?

A. No, I have stated that my judgment was arrived at because of my knowledge of the income of the property, rental values and all that sort of thing.

Q. The income, comes later than the passengers, doesn't it?

A. Yes.

Q. If the income is produced by the passengers and you have no knowledge of the number of passengers, and no means of
328 estimating it——

A. I did not estimate that before the passengers were brought there; I estimated it after the passengers were brought there.

Q. How could you estimate it after without knowing how many went there before?

A. That is a pretty hard question to answer.

Q. I agree with you. Have you any estimate of the number of people that came from the South side during the years you have testified above, from other sources of travel?

A. No, sir.

Q. Like street railways?

A. No, sir.

Q. You say that times had picked up in 1897, that business was better right along?

A. I think there was some start about 1897. Of course, it was bad in 1897, but there was some improvement in 1897. In 1898, as I recall it, there was a decided change, and that made an increase in property.

Q. The fact is it commenced to rehabilitate in 1897, did it not?

A. It began to improve, yes. In 1898 I think it was somewhat noticeable.

Q. The picking up of business and the restoration of confidence throughout the country, does that, in your judgment, increase or decrease travel on public lines?

A. I think it would have a tendency to increase.

329 Q. Do you think that it would increase it as much as the general increase of population with times remaining the same, would it, or more or less than that?

A. It would depend upon the severity of the panic or the amount of the boom, as you want to term it.

Q. You have to consider in making your seven per cent. increase, due to travel, you have to consider the times, didn't you?

A. Yes, I did in a general way. I said the general average was seven per cent. I did not take it any one year as compared with another.

Q. Mr. Witness, assume that this Elevated Road was put into operation at the very time the business conditions generally increased in Chicago, times picked up, and business generally picked up, and assume there was no change in the operation in the elevated structure or in the structures that fed this new structure, the travel, and that situation and conditions continued for say, three years, what, in your judgment would have been the amount of increase in travel by reason of the better times alone?

A. I could not estimate that.

Q. That is just exactly as I contend, just as difficult to do that as to——

Mr. Walker: Don't argue.

The Court: He has given the answer.

330 Mr. Mecartney: May I ask you; supposing—my question assumes there has been no increase of population, the population was the same and other conditions were the same, everything was the same except that business had become active and profitable and continued to increase for a space of three years?

A. There would have been some difference, yes; there would have been some difference in the effects upon the property, but what the

amount of the effect was it would be impossible to determine. Nobody could determine it.

Q. You could not estimate that?

A. No, it would depend——

Q. Supposing for three years after the Road was put in operation business conditions were exactly normal as they had been before and continued a long time after to be the same, tell us how much you would estimate the increase of travel and its effect upon this property, from the increase of population during those years alone?

A. You cannot estimate that. I could not estimate that.

Q. Tell us how you could estimate the increase during the same period of time, in market value, to the property in question from increased travel facilities furnished by other lines, surface lines, and increased suburban traffic?

A. It would be very difficult to estimate that. My reasoning has been from the actual conditions as they existed before and after since.

Q. Cannot you imagine this condition as existing with

331 two or three elements left out?

A. No, I cannot imagine a condition whereby I can separate in dollars and cents, or percentage, a small fraction of the reasons for the advance in value.

Q. Well, if the element of increased facilities for travel, is one specific reason, why can you separate that and estimate it.

A. Let me see. Repeat that agin, and if there is an answer to it, I will try and give it.

Q. Repeat it.

(Question read.)

A. You can call it a single reason, if you wish. My estimate of increase, as I said right along, was based upon the results obtained by reason of the people brought there, in my judgment.

Q. You say I may call it a single reason, if I wish to. What do you call it? What do you call the increased facilities for travel furnished by the Loop Road, a single reason, or a complex reason.

A. Yes, it is a single reason. People are brought there and by reason of their being there——

Q. I do not care for any further answer. I do not think the witness is responsive. Will you tell us this then; the fact is that you are just giving us a result?

332 A. I am giving a result.

Q. Of one element mixed in with a lot of other elements, none of which you can separate, isn't that the facts?

A. No, I do not think so at all. I think I can separate the element of travel pretty closely as compared with the element of benefit as compared with increased population. I think I have a pretty general idea. I cannot state it in dollars and cents as to that. As to the proportion, but I think I can get at it pretty close.

Q. How do you get at it?

A. Partly from the rentals which is a basis for values, and by my——

Q. What produced——

Mr. Walker: Let him answer.

Mr. Mecartney: All right. Go ahead.

A. The value of Central business property in practically every case is dependent upon what you can get out of it.

Q. Is there any element of that subsequent increase in value, subsequent to the time this loop was put in operation, that you can estimate except increased travel?

The Court: Increased travel by reason of the Elevated.

Mr. Mecartney: Yes, increased travel by reason of the Loop structure; Is there any of these elements that enter into that that you can separate and estimate to us?

A. Yes, I stated that the increase in population was an
333 element that went in.

The Court: He wants to know if there is any other element for which you can fix the percentage as you have for travel?

A. Oh, yes; there are a number of benefits, for instance, advertising.

The Court: The question is this: You have named one half of the increase of seven per cent. as due to the increased travel or increased population brought down to this point by reason of the Elevated?

A. Yes.

The Court: Now the question is, can you estimate in percentage any of the other elements that go to make up this increase of seven per cent. in the value of the property, that is the question?

A. Well, the elements that went—that I took into effect arriving at my basis of seven per cent. per annum of increase, was the increase of population and the advantages secured by increased facilities of transportation, and there are many other things that enter into that. There is the advertising feature which is quite material. I do not know how I can answer that question any better than I have.

Mr. Mecartney: I am going to let you alone then. I won't bother you any more. Let me ask you this. To conclude this matter, the other thing you cannot estimate is to compare that building
334 without that structure in front of it, estimating its value as you have, and then estimate its value with the structure in front of it, eliminating travel benefits, you cannot estimate that?

A. I could not estimate in dollars and cents the actual damage to the property by reason of that structure in itself, I do not think anybody else could.

Q. You do not think anybody else could?

A. I do not. In dollars and cents.

Q. Do you think that anybody else could estimate the effects from increased travel without knowing how much the increased travel was, without knowing how much it was before; without knowing how much was contributed by other lines and facilities?

A. I think I decidedly do know. I mean, not actual numbers but I know from my experience and observation approximately what

that effect has been, and I think I know why the effect has been beneficial.

Q. Isn't it a fact that the only thing you do know about the whole thing is that the increase of travel furnished by this Loop to this property, increases its value about three and one-half per cent. a year?

A. I think I know about what that effect has been. I think I know about what the damage would have been if you had taken it off some years back and had done without it.

Q. Supposing you were instructed as a witness in an eminent domain case like this—

335

Mr. Walker: I object to that.

Mr. Mecartney: In a case of this kind.

The Court: Take a case of this kind.

Mr. Mecartney: Supposing this Railroad curved here at the corner of this building and cut off a triangle with an apex of ten feet from the front of it, and the question was: What was the effect upon the value of that property, assuming it had the value which you gave to it, for the taking of that triangle for this railroad, and having it constructed right in the corner of the building there, and the effect upon the street easement of that property, together with the value of the part taken, and you were told to estimate that value, after considering any offset or deduction by reason of increased travel facilities furnished by that road, could you do it?

A. Yes, sir; I think I could do it very closely.

Q. Now then, just leave off your triangle and estimate it now?

A. No, sir; then you have not taken anything. In the other case you took something right out and I could tell what it would rent for. In this case you do not have that.

Q. What do you take in the other case you do not take here?

A. You take away some light. What is the result of damage by taking away of light? What is the result of damage by reason of population in the street? If you get into property taken I can tell you what it is worth. If you take property I can tell you what is the value of the property taken.

336

Mr. Mecartney:

Q. I will take a down town piece of property or I will take this property, and I will assume that that property of McCoy's had an alley ten feet wide along the north side of it for the whole 133 feet, and running on to La Salle Street, do you get the situation, Mr. Wood?

A. Yes.

Q. If a railroad, elevated or other railroad, any railroad came by, and under public authority had a right to condemn that alley and lay its track on there and take the entire alley away from the property, would you feel yourself competent to estimate the damage to the property by the loss of that alley?

Mr. Walker: That is objected to because it is damage or benefit.

The Court: Either one.

Mr. Mecartney: I will put it market effect.

Mr. Walker: The railroads might ask more value than the taking of the alley.

A. I would consider the situation there similarly to the situation to the railroad on the other side of the property, on the south side instead of on the north side.

337 Mr. Mecartney: I move that the answer be stricken out.

The Court: It may be stricken out.

To which ruling of the Court, the Defendant by its counsel then and there duly excepted.

Mr. Mecartney: Would you feel yourself competent to estimate the market effect whether damaging or beneficial?

A. I think so.

Q. Supposing it didn't take all the alley, but it took five or six feet up in the alley, would you consider yourself competent to estimate the damage from such a sale and the construction of the same railroad?

Mr. Walker: I object to that. If he uses the word "Effect"——

Mr. Mecartney: Effect I mean, one way or the other.

A. I think I can estimate.

Q. So if it was put at the height of this Elevated railroad, you think you could estimate that too?

A. I think I could.

Q. If you could estimate it in the alley in the rear of the property, why couldn't you estimate the effect of such a structure in the street, in front of it?

Mr. Walker: I object to that.

The Court: That is independent of——

Mr. Mecartney: Independent.

Mr. Walker: He has not said he could do either independent.

A. I am giving my opinion in absolutely the same con-
338 ditions.

The Court: The witness states that his answers are based upon the fact that this elevation in the alley was being operated and in use as an active structure, not merely as simply a structure.

Mr. Mecartney:

Q. I mean as an active structure. When you stated you could estimate the effect of the Elevated Railroad in the alley, did you consider—did you mean to say that you could not do it without considering the travel that was brought to the property?

A. I could not estimate the net effect. You are trying to get me to estimate the effect of the diminution of light and noise, and the space taken by the structure itself, and I have said it would be very difficult to estimate that in dollars and cents. I do not believe anybody could do it. If you had taken the property and actually used the property that might otherwise be used and rented, then I could estimate for you what the damage is to that property.

Q. Have you finished your answer?

A. Yes.

Mr. Mecartney: I move that it be stricken out.

The Court: It may stand. The latter part of the answer made it responsive, in the opinion of the Court.

Mr. Mecartney: Repeat the question as he answered it.

(Question read.)

339 A. I do not think I could estimate that, separating the travel from it.

Q. Supposing it was a freight railroad that did not carry passengers, could you do it then?

A. I would say that it was probably detrimental. It would depend upon whether they had a switch in on the street and a few other things.

Q. Strike out any privilege of switching, could you do it then?

A. That depends, I do not know.

Q. Well, I guess we will leave it there. Mr. Woods, how many times have you testified in Elevated Railroad cases for the Elevated Railroads in suits of this nature, affecting property in the downtown districts of Chicago?

A. I could not state. I have testified in a number of cases in the last eight or nine years.

Q. Half a dozen?

A. I should think so.

Q. And with all that experience in estimating, considering the various elements that enter into the structure and operation of elevated railroads, you still say you are incompetent to estimate the amount of the market effect unless you consider increased travel facilities?

Mr. Walker I object to that.

The Court: Sustained.

Mr. Mecartney: Exception. That is all.

340 THADDEUS H. HOWE, called as a witness on behalf of the defendants, having been first duly sworn was examined in chief by Mr. Walker, and testified as follows:

Q. What is your business as to real estate business? How long have you been in that business?

A. Well, my first operations in real estate, I believe was in 1888 or in 1889, but I have only been in that business entirely since about 1905, and giving my time to it with the exception of the time that I was president of the Old Colony Bank in 1911, 1912 and 1913.

Q. 1888, did you do anything to do to keep posted in values up to the time that you made your business exclusively real estate up to the time that you made that your business exclusively?

A. Yes, sir.

Q. Will you tell us what you did? If you will, during those periods, up to the time that you made your real estate business your exclusive business, in keeping yourself posted, say in 1892, 1893, 1894 and up until 1905, in the values in the down town district?

A. Well, I was in the cigarette and tobacco business, and it was my business, in order to get in touch with the different cigar locations, where it was policy for us to advertise, and we naturally
341 found out where the traffic was, where the people were, in order to find out whether it would pay us to give certain commissions to the cigar people for the use of their windows and various things of that kind, and in the way I got a line on the value of the different locations where the traffic was.

Q. Are you a member of the real estate board?

A. Yes, sir.

D. B. MacRae, recalled for further examination, by Mr. Walker, resumed the stand and testified as follows:

Q. I suppose, you know as a fact, Mr. MacRae, don't you, that during the years 1897, 1898 and 1899, much fewer cars were used upon the Loop than after 1900?

A. There were, because the traffic was smaller in those years.

Q. And some of the roads were not running?

A. Not the Northwestern.

Q. Only the Lake Street and the——

A. After 1897, 1898 and 1899 and the early part of 1907, during those years, there were only three roads running around the loop.

Mr. Mecartney: I want to ask you then, do you have the
342 total numbers of cars or trains for the years 1900 or 1901?

The Witness: I have for the six months of 1900, and for the period of—I have the data for the second six months of 1900.

Mr. Mecartney: Well, I would, on reflection, I would like to have him state it then and may be I can get some basis to compare it——

The Witness: All right. For the second six months of 1900, the first period in which all of the roads were operating around the Loop, the number of cars around the Loop were 546,658. For the year 1901, the period of May and October excluded, due to the power house not being in operation, 573,570. For the year 1902, with the month of May to July—for the months of May to July, inclusive, and without the period due to the power house not being in operation, there were 907,875. For the full year of 1903, there were 1,259,147. For the year 1904——

Q. Well, you mean by that not that the four roads had such a number of cars——

A. That was the total——

Q. —but that is the total number of cars passing a given
343 point on the Loop during that year?

A. That is correct.

Q. No matter how many times that the same car passes there, if the same car passes there ten times in a day that would be in your mathematics as though ten cars had passed?

A. That is correct.

Q. You count each time as they pass by?

A. Yes, that is correct.

Q. Now, Mr. MacRae, how many cars would they average a month?

A. Well, the number of cars per month for that year was 3,464.

Q. In the same way, the car being counted as a car every time it passed around?

A. The same.

Q. No matter how many times it passed?

A. Yes, sir.

Q. Well, how many times a day?

A. I beg your pardon, I made a mistake. Did you ask me the number of cars for the month?

Q. Yes. You gave the years. In 1903, what was it by month?

A. I gave you the wrong figure for the number of cars for the month. That was 104,930.

Q. Does that show the trains by the hour?

A. Yes.

Q. About how many?

A. The average number of trains per day was 1,050. The average number of cars *were* hour was 44.

Q. So that that would give the interval—let me ask you,
344 Mr. MacRae, is there any difference in the interval during the various hours of the day?

A. Yes, sir, considerable difference.

Q. Well, what is the difference?

A. The hour schedule, particularly, broadly speaking, is divided into two periods, the daylight period and the night period. The daylight period is subdivided into three periods.

Q. The general subdivision is between the daylight and the night period?

A. The daylight and the night period.

Q. And the daylight period is again subdivided into three periods?

A. The daylight period is again subdivided into three periods and these three periods are the general periods from five o'clock in the morning until about 7:30, with the A. M. rush and the P. M. rush.

Q. Just a minute. I didn't get the first period?

A. Well, the daylight period extends from about five o'clock in the morning until about 7:30 at night.

Q. What are the three divisions of that period?

A. That is divided into two separate periods of the A. M. rush and the P. M. rush.

Q. That is one period, the rush hour in the morning and the rush hour in the evening, you call that one period?

A. No, we call that two periods, the A. M. rush and the P. M. rush.

345 Q. The interval there is the shortest interval you can use?

A. It is.

Q. And operate the Loop at all?

A. Yes, sir.

Q. What are the other intervals except the rush hours?

A. Outside of that on the night——

Q. Before you get to night, the other hours beside the rush hours, would be the ordinary interval?

A. That varies on the different roads.

Q. Can you give what it was?

A. On the Metropolitan Elevated, they had four terminals and from each of the four terminals a train left every six minutes. That made a train entering the Loop every — minutes and a half outside of the rush hours. During the rush hours, from each of those terminals a train left every three minutes, from each of those four terminals.

Q. Instead of every six?

A. Instead of every six, which made a train entering the Loop every forty-five seconds.

Q. All right, how about the others?

A. In the day light?

Q. Yes.

A. On the Northwestern Elevated, outside of the rush hour period, their schedule was about six minutes, verying from five to six minutes. On the South Side Elevated the interval was two and a half to three minutes.

Q. Well, they didn't have four lines, did they?

A. No.

346 Q. They each had one?

A. They each had one line. The Oak Park interval was about eight minutes?

Q. Now, what is the next interval?

A. Well, that didn't include the rush hour period, though, Mr. Walker.

Mr. Walker. All right.

A. During the rush hour period, the Northwestern interval was three minutes. The South Side elevated was about two minutes and the Oak Park was about six minutes.

Q. Now, Mr. MacRae, after 7:30 at night what is the interval?

—. It varies slightly along towards midnight. In the early part of the day it was lengthened out to about seven minutes and to eight minutes. After midnight the trains were a half an hour apart. From midnight until five o'clock in the morning.

H. E. PERKINS, recalled as a witness on behalf of the defendant, having been previously sworn, resumed the stand for further examination by Mr. Walker and testified as follows:

Q. Since you were on the stand the other day have you made a plat which shows a section view of this structure in Van Buren street?

A. I have.

Q. Will you tell us what this shows, please?

A. This is a cross section of the elevated structure look-

347 ing east on Van Buren at a point 130 feet west of the west line of Clark street.

Q. Well, these girders that go across here are solid girders, aren't they?

A. They are partially solid and partially open.

Q. Well, this section shows them as almost open, with the exception of four little narrow black sketches here in the middle (indicating on plat).

A. The outline of the cross girder is shown.

Q. Now——

A. The outline of the columns are shown. The outlines of the brackets are not shown.

Q. And then above the girder upon which the platform rest, what is shown there?

A. The section of the platform girders and the timbers that makes up the platform floors.

Mr. Walker: I am not going to—now then, Mr. Reporter, mark this defendant's Exhibit 3.

Mr. Walker: Now, Mr. Perkins, will you just tell the jury what this is?

A. This shows the view of the structure as it would appear if it were cut in two.

Q. Now will you explain, if you please, what the various things on it are, and what sort of material they are, as Mr. Mecartney thinks—seems to think that is an open space there. Just
348 describe it. That was not intended to be an open space, this is the post, isn't it?

A. That is the column, yes, the post.

Q. And that is the plate steel as you told us?

A. It is solid, yes, and the cross girder is partially solid, partially a solid girder and there is an open space right in the center of it, otherwise it would be a solid plate girder. The lines shown as heavy lines are the section through the track girder and through the platform.

Q. Those lines that appear, those heavy lines that appear above the girder as supporting the platforms on either side of those lines, that run there, the heavy lines, they run from the girder there, those are the lines that you have reference to, are they?

A. They are.

Q. Go ahead. What are the other things?

A. The ties are shown as resting on top of the track girders with the rails and girders on top of the ties. At the center is indicated a box made of timber that holds the cable.

Q. Will you give us the various heights in relation to the——

A. At this point, the bottom of the cross girder is 16-2/10 feet above the ground on the street in Van Buren street. At the sidewalk it is 15-6/10 feet from the curb to the bottom of the
349 cross girder. The distance from the back of the column to the building, the nearest point of the structure to the building is 11-65/100 feet. From the nearest point of the platform to the building is 12-12/100 feet.

Q. Are there any other distance- there that you want to——

A. Those are all the material distances, I guess. The other distances exist as they are shown there.

Q. Yes. But I don't see any stairway. Have you made any measurements?

A. I have.

Q. From the bottom of the stairway to the west side of the plaintiff's property

A. I have.

Q. What is the distance?

A. The distance of the stairway coming from the street up to the station itself, from the west line of the McCoy property is 66 35/100 feet.

HARRY V. WOOD, recalled as a witness on behalf of the defendants, having been previously sworn, resumed the stand, was examined in chief by Mr. Walker and testified as follows:

Q. Now, Mr. Wood, calling your attention to the years 1890 or 1891, was anything—was there anything that occurred in this market that was temporary in character that affected the rental values of property over a short period of time, and is so what?

350 A. The World's Fair coming here in 1893 had an effect to place rentals on a higher basis during that period.

Mr. Mecartney: I object. He has answered during the World's Fair. He has answered it.

The Court: Read the question and the answer.

(Question and answer read.)

Mr. Walker:

Q. Now, was that a temporary effect or a permanent effect on rental values?

A. That was a temporary effect.

Q. Mr. Wood, would the rental at that particular time be a criterion of the actual value of the property, I mean permanent value?

A. No, not any more than the temporary decreased rental values would have had an effect on the sale of a 99 year lease, on 99 year lease values during the depression, because it was a time of temporary depression and everybody realized it, and it did not affect the sale price very materially or the rental prices, that is the long term leases or the short term leases, although they materially diminished. That is the rental values were temporarily less, but it did not affect the sale of property, the sale value of property, or the 99 year lease value because owners recognized that as a temporary decrease because of the panicky condition.

Q. About what temporary decrease are you talking now?

351 A. A temporary decrease in rental values when the panic struck us. There was a decrease in rental values which was considered temporary, because of the panicky condition.

Q. You said that panic values were similar to market values as the World's Fair was before——

A. It was exactly opposite to the condition of increase prior.

Q. Now, at what date do you fix the date of the panic, the time of the panic?

A. Well, we began to feel the effect of it in the fall of 1893 and the spring of 1894 we were well into the panic, the year 1894 was perhaps our hardest year, and the year 1895 was almost as bad, and in 1896 pretty nearly as bad, and the fall of 1897 there seemed to be some general improvement, and in 1898 there was quite a little improvement in the conditions.

Mr. Walker: I want to know whether it applied in the down town loop district?

A. No, I thought he spoke of the outside district and I answered it as the outside district generally, the outside district. That section went all to pieces during the panic; whereas the central business district was not materially affected, and was not affected at all. It held its own in values but the outside districts, as a rule, almost invariably, went all to pieces in the panic, and by 1898,
352 there was an improvement, possibly to the extent of ten per cent. That is very hard to estimate. I don't know what the improvement was, but it was an improvement.

Q. I think that is all—well, one thing more. In your cross examination you said something about—something with reference to advertising features, what did you mean by that?

A. Well, in speaking of the advertising advantages, I was speaking of the show windows along the loop. People would pass on the elevated trains and see the advertisements in the windows, particularly the second floor, and that was some advantage, and it caused an increase of values on second floor space, particularly where the buildings were constructed with large windows, and I had cases of my own, many of them, of that kind, where rentals in those locations, on the face of the loop, were twice what they were in the same building——

Mr. Mecartney: Oh, I object to these long answers, your Honor. It is just making a speech to the jury.

Mr. Walker: All right. If that is too general, take this property in question, this case, and state what the effect if any in your opinion the advertising had on the values or the use to which these second and third floors could be put for commercial purposes as distinguished from its previous use?
353 Mr. Mecartney: I object to that on the ground that it is a hypothesis that did not exist.

The Court: I thought you withdrew your objection a minute ago.

Mr. Mecartney: I meant as to the fact of going into redirect. I am objecting on other grounds.

The Court: He may answer.

Mr. Mecartney: Exception.

A. Well, I cannot quite concede that condition with the particular property used as it is used. I could see a condition across the street, where the big plate glass windows were put in.

Mr. Walker: Suppose that the second and third floors, if it were ascertained, if it were a fact—it does not appear here—were adapted

to the small purposes, could it have been used, in your opinion, for anything, to produce as good revenue or better revenue by reason of the feature you have spoken of, if plate glass windows had been put in, and the second and third floors used for advertising.

A. I am in no position to judge what revenue was received prior, but I do realize that particularly if large windows were put in there, a good revenue could have been obtained for anything along the loop much more than similar locations in the building which did not face the loop.

354 Mr. Mecartney: I object to that as not responsive.

Mr. Walker: I think it is competent.

The Court: I do not think the comparison—I think so far as the comparison is concerned it may be stricken out.

Recross-examination by Mr. Mecartney:

Q. Outside of the Weber store, cat-a-corner across from this property, what second floors between Federal street or the first street east on Fifth avenue are devoted to advertising, commercial purposes?

A. Between Federal and——

Q. Fifth avenue. Outside of the Weber store?

A. I do not think I recall—the Rialto Building comes—the new Mandel Building is directly west, then comes the Rialto, and then there is the one story——

Q. You can think to yourself and then answer later if you can. I do not mean you to go all over that.

A. There is no property across the street, when you pass the Weber and get into the new hotel property which has been constructed—yes, there is a property as I recall it on the southwest corner of Clark and Van Buren. It seems to me that second floor is used just in that way, very similar.

Q. What building?

The Court: Are you talking to the stenographer or to the
355 jury or Mr. Walker or yourself, Mr. Wood?

Mr. Mecartney: How big a building is it, opposite this, on the southwest corner of Van Buren?

A. That is a two story, as I recall it.

Q. Is it an old building or a late building?

A. Yes, it is an old building.

Q. Built about twenty years or more?

A. Yes, but they are using the second floor there, they changed that second floor entirely so as to get the advertising advantages that I speak of.

Q. Did you have anything to do with the change of the second floor for that purpose?

A. No.

Q. What is the second floor used for of the building you have last mentioned.

A. I do not remember what purpose.

THADDEUS H. HOWE, recalled as a witness on behalf of the defendants, was further examined by Mr. Walker, and testified as follows:

356 Q. Yes. What property have you had in your hands, your own and other people's, if any?

A. I owned the southeast corner of Lake Street and Fifth Avenue, or held it on a long term lease, and purchased the building. I got the bldg. and leased the ground; the southwest corner of Lake Street & Fifth Avenue.

Q. That is another piece?

—. —.

Q. You got the building?

A. Another piece. The piece adjoining the Brigg's House, called the Geoghegan piece.

Q. That is the piece——

A. 38 by 80: I got that——

Q. The Lake Street piece is which corner?

A. Lake Street—Lake and Fifth Avenue, the southeast corner, and Lake and Fifth avenue the southwest corner, I owned two corners on long term leases.

Q. The southeast corner of Lake and Fifth avenue, what was that?

A. 114 Feet on Fifth avenue and 60 feet on Lake Street.

Q. How big a building on it?

A. Five stories.

Q. Mr. Howe, at that point, there is an elevated railroad in front of it?

A. Yes.

Q. On Lake Street?

A. Yes.

Q. And an elevated railroad on Fifth Avenue, on the side of it?

A. Yes.

Q. A station on the alley between Lake and Randolph?

A. Yes.

Q. Describe it then, its relation to the railroad.

A. The elevated loop runs around, in front, rather, of the north side of the building and also the west side of the building, 60 feet on Lake Street and 114 on Fifth Avenue. There is an exit closer to my building than the entrance. There are two different stairways, one on my side of the street.

There has recently been a transfer station made there which——

357 Q. Never mind what it did, but there is one?

A. Yes.

Q. What other property did you name at that corner?

A. The southwest corner, 20 feet on Lake Street and I think it is 80 feet on Fifth Avenue, about 20 by 80.

Q. Where is that in relation to the railroad.

A. Well, I think it is the Oak Park that runs on the North side of the building, or rather the road that runs over the river there on Lake Street, and then the loop is on the east side of the building.

Q. There is a curve around that corner?
A. Yes, sir.
Q. It is a fact, is it not, Mr. Howe, that on that corner, Lake and Fifth Avenue, is a cross made by the four roads, the Northwestern going north over the Kinzie Street bridge, going on Fifth Avenue, the loop going south, and the Lake Street going east and west on Lake Street, with all the cross-overs at that point, and the tower house?
A. There was. What changes this re-routing has made there——
Q. That is only six months ago. Say before 1895.
A. Yes, they all cross there, all roads.
Q. What is the other piece on Fifth Avenue?
A. 38 by 80 on the east side of Fifth Avenue, adjoining the alley and in the rear of the Briggs House property.
Q. That is improved with what kind of a building?
A. Three story.
Q. The which—the Geoghegan property?
A. Three story—four story I think it is, three or four, two stories for the hotel—I wouldn't take an oath whether it is three or four.
358 Q. What else, Mr. Howe, on Fifth Avenue?
A. I purchased and leased the Times Property and the building adjoining, 100 feet on Washington Street and 100 feet on Fifth Avenue, running on Washington Street to the alley, being in a quarter block.
Q. Where the old Chicago Times was published?
A. Yes.
Q. What kind of a building is that, The Times?
A. A five story building.
Q. It is an old style office building upstairs?
A. Yes.
Q. Then any other, on the loop?
A. Well, I have had transactions—not long term leases—just five, seven and eight years, no long term leases.
Q. What other leases?
A. I have had adjoining the loop though.
Q. What?
A. I have had adjoining the loop, that is, old number 11 and 13 South Clark Street. That is just a few feet from the elevated on Lake Street, on the side of the loop.
Q. On Clark Street?
A. Yes.
Q. Now, Mr. Howe, do you know what this property was worth in question in this case—you were here when I described it with Mr. Wood and you have seen the plat and the building and the property, haven't you, at my and Mr. Burns' request, the property involved in this case?
A. Oh, yes, I know the property.
359 Q. Yes. Have you an opinion as to what the market value of this property including the improvement there was in 1894 and 1895?

A. Yes, sir.

Q. With improvement on that east 25 feet and a 99 year lease, the remainder of the term of 99 years, the lease being made in 1883, on the corner piece, 95 feet by 108—95 on Clark street—with the building on it?

A. Yes.

Q. What in your opinion, without reference to the corner, either the corner of La Salle or Clark street was the 25 foot strip worth alone in another owner?

A. At what date?

Q. In 1894 or 1895?

A. Including the building or just the ground?

Q. Well, give me the ground value, Mr. Howe, first?

A. I would say about possibly two thousand dollars at the outside. Without the connection with the corner, do you mean?

Q. Yes, sir, that is what I mean.

A. I would not think it was worth quite that. I would sooner say $1,600 or $1,700 without the corner.

Mr. Walker:

Q. You see I want to show whether $100,000 that he paid was the real market value or was a bonus, because it could be
360 used with the corner. I have already got it out of one witness.

A. What the value of the land was in 1887.

Q. Assume that the land——

A. I would consider the land worth fourteen or fifteen hundred dollars.

Q. In 1887?

A. In 1887 when Mr. McCoy bought it, although he paid $2,400 for it.

Q. The value was as to the corner, in your opinion?

A. And to keep it out of the hands of somebody else. It was worth more to him than it was to anybody else.

Q. When he got it it was worth that to him?

Mr. Mecartney: I object to that.

The Court: He does not state that it was worth that to him. Its price in the open market.

Mr. Walker: He has given the price in the open market.

The Court: Yes, twelve or fourteen hundred dollars.

A. No, fourteen or fifteen.

Mr. Walker:

Q. What in your opinion was the 25 feet with the building, the 25 feet worth in 1895, in the ownership of McCoy, per front foot?

A. In the ownership of McCoy?

Q. Yes, in connection with the 99 year lease on the corner, in 1895. I ask you that because I got the value, Mr. Howe, a minute ago, as to what it would be worth without the corner?

361 A. Mr. McCoy in 1895 was—well, as part of the corner, in the neighborhood of $2,500 or $3,000.

The Court: $2,500 or $3,000?

A. Yes, in connection with the corner. I was taking the corner.

Mr. Walker: McCoy, in connection with the corner.

Mr. Mecartney: McCoy or anybody else. He says in connection with the corner.

The Court: Whoever controlled the corner.

A. Whoever controlled the corner. I would consider the corner worth from $3,500 to $4,000. That is further from the corner because it is 100 feet. I generally take a corner of 100 square feet in arriving at my valuation.

Mr. Walker: I was just about to ask you what value you placed on the 98 feet on Van Buren street or the 95 feet on Clark. I *would* just about to ask you when you had given that sum.

Q. Mr. Burns: Let us hear it.

Mr. Walker: That is the same year?

A. Just prior to the time the elevated road started.

Mr. Burns: How much did he say?

A. I would take that corner to be worth from $3,500 to $4,000.

Mr. Walker:

Q. Did you figure the value of Clark street valuation or Van Buren?

362 A. $4,000 on Clark street and $3,500 on Van Buren.

Q. Have you an opinion, Mr. Howe, as to what that building—are you able to give an opinion as to what the building was worth in 1895 on the 25 foot strip in connection with the ground. The building was built about 1885.

A. I would figure out depreciation of a building of that kind of about at least three per cent. and I suppose you ought to figure out a little more than that, and it was built——

Q. Three per cent. per annum or——

A. Three per cent. per annum, and you take off about 25 per cent., off the building—if the building was worth about forty, as my judgment is, when it was built, thirty thousand approximately.

Q. And bearing in mind—what would you say the corner building was worth, bearing in mind that it was part of the ground, part of the real estate, bearing in mind that it was built in 1883?

A. What it was worth in 1905?

Q. Yes.

Mr. Mecartney: 1895.

Mr. Walker: I mean 1895.

A. 1895. Well, I would say from one hundred to 125. I do not consider myself an expert on judging buildings, without going into the details, but that would be approximately what I 363 would consider. It is a hotel building and has got lots of bath rooms and one thing and another and it is a hard thing to judge it.

Q. Do you know the fact as to what the basis of interest was at that date?

A. I did and do.

Q. Now, what would be the rate by which the value of the fee where there was a lease running say 89 years or 87 years, that you would say to capitalize, to get the value of the fee in 1895 in this downtown district.

A. Well, in 1895, they had gotten down to even some as low as four, but the general was about four and one-half to five. There were some leases even beyond, on a higher basis than that, but 4½ to 5 was the average.

Q. Would five be the average then?

A. Well, I don't—I would say, yes, about 5 per cent., I should think would be about the average.

Q. Upon what basis then would you capitalize the income that the Keeps derived from this property in 1895, which was $8,000 a year, to get the value of the fee if you would use that method?

A. In 1895?

Q. Yes. This lease was made in 1882, in the later—along in the first of October, with 89 years to run, about 12 years of that time having expired, the lease had 87 years to run, and the
364 rental was to be for the balance of the term, $8,000, you are asked to give us the value of the fee with the incumbrance, if you call it that, of a 87 year lease on it. How would you ascertain the value of the fee?

A. Of the fee at that time?

Q. Yes.

Q. Well, a fee of that kind—I would think—I would have based that on about 4½ per cent. on a particular good piece of ground, desirable location.

Q. That would be say——

A. Yes, 4½ per cent. I would have put that at about $180,000, the fee.

Q. We can do the mathematics. Now, what in your opinion was the value of the 25 foot strip—this part of the corner now, but it is in McCoy, in 1897, from October, until the year 1898, anywhere within that six months?

A. 1897.

Q. Since the year the loop was put in operation sometime, or all of it that was operated before 1900, sometime before the first of November, 1897. It was built in the spring of 1896. We got the value before. Now, what in your opinion was its value, if there was any difference, in 1897, and the early part of 1898, after the elevated railroad was put in operation?

A. Well, my idea and judgment is that property enhanced in a general way a matter of about eight per cent., allowing
365 along in through there, and averaged a valuation along in 1905 of $3,500 to $4,000 a front foot approximately.

The Court: 1895?

A. 1895.

The Court: You said 1905.

A. Excuse me.

Mr. Walker: Did you mean 1905?

A. No. In 1895 I would consider that property, I suppose, $500 or $600 a front foot more than it was. In other words it would be worth from $4,200 to $4,600 or $4,700.

—. Does that apply to the whole piece including the 25?

A. Well, no. I would not—notwithstanding the fact that the title was in McCoy, the 25 feet, it being a little further removed from the corner, I figure the corner only about 100 feet, although on account of being one holding, I have taken the whole 108, I would consider that even in McCoy off about twenty per cent., off all that. In other words if I would say the corner property was worth $4,500 per foot, I would take the inside at $3,900 or $3,800.

Q. You gave a figure of $4,200 to $4,400 and the 25 feet you would say was the twenty per cent. less?

A. Twenty per cent. less.

BENJAMIN I. GREENEBAUM, called as a witness on behalf of the defendants, having been first duly sworn, was examined in chief by Mr. Walker and testified as follows:

386 Q. What is your business, Mr. Greenebaum?

A. Real estate and investments.

Q. Now, I call your attention to the property at the northeast corner of La Salle and Van Buren Streets, lot 20 and 23, except the east 25 feet which is in—the lease is in Mr. McCoy. That property is 80 feet on Van Buren Street?

A. Eighty-two and a fraction.

Q. On Van Buren Street?

A. Yes, sir.

Q. And 96 feet on La Salle Street?

A. And 96 feet on La Salle Street.

Q. Have you any interest in that property?

A. Yes, I took a 99 year lease on it.

Q. Now, take the property next north of it, where the open Board of Trade was, that is 100 feet by 105, isn't it?

Mr. Mecartney: Why not let him describe it?

The Witness: 100 by 107.

Mr. Walker:

Q. Did you have any interest in that property during the time that the Open Board of Trade building was built upon that property?

A. Why not when it was built. I did while it was standing there.

Q. While it was standing there. What interest did you have in that?

A. Why, I took a 99 year lease with some other people on that property.

367 Q. Now, tell us at what date, did you take the lease on either piece or get both pieces?

A. Well, now, the Mendel property, that is the corner piece, that lease was closed about March 1st, 1905.

Q. And when did you take the lease on the other piece?

A. The other was within a year of that time. I think sooner.

Mr. Walker:

Q. Upon what per centage, if any, was the lease held of the 80 feet on Van Buren Street, the corner piece based?

Mr. Mecartney: One moment, I object. One moment, allow me to confer a moment, your Honor. The plaintiff objects to transactions as late as 1905, and even though the rentals and other data relating to the particular property in question even though the court has allowed these to *og* in down to that period, the plaintiff still objects and still says that even on that basis, that collateral sales of other property which is collateral to the main issue ought not to be allowed for the same period or nearly so long a period, and we object to it.

The Court: Objection will be overruled.

Mr. Mecartney: Yes, and exception.

Mr. Walker:

Q. That is the property immediately west of the McCoy property, is it?

368 A. Yes sir.

Q. The court says you may answer.

A. Based on a four per cent. proposition as all down town real estate is.

Q. What was the consideration?

A. Sixteen thousand dollars a year for 99 years, with the privilege of fifty years additional at twenty-two thousand dollars.

Q. What buildings were on the 80 feet, Mr. Greenebaum?

A. On the Mendel property?

Q. Yes.

A. There was a four story and basement brick building there, a very old building.

Q. And was any value placed upon the building?

A. No, the lease provided the building should be wrecked within a given number of years.

Q. It was based upon the ground valuation?

A. Yes, sir.

Q. What are the terms of the ground rental of the property on which the Rialto—I mean the Open Board of Trade Building stood?

Mr. Mecartney: The same objection and the same ruling, I suppose?

The Court: Yes.

Mr. Walker: He says you may answer. He is simply preserving his objection.

369 A. That property, we paid $11,000 a year, without revaluation.

Q. What was the time, I have forgotten what you said about it?

A. Practically 70 years still to run on the lease which was then in existence, with a privilege of 50 years more.

Q. After the 70.

A. Yes.

Q. Oh, yes.

A. Originally it was a 99 year lease.

Q. What was the building on that ground?

A. Well, I paid about thirty thousand dollars, as I remember for that building, it may have been forty thousand dollars, and then I spent considerable money in the building.

Q. Well, I mean what was it figured before you made your improvements in the building—at the time you made the purchase, what was the value if any was placed on the building for the purpose of the buyer, not without——

Cross-examination.

By Mr. Mecartney:

Q. Now, the dimensions of the Open Board of Trade lot was the 100 feet—

A. On LaSalle Street.

Q. —on LaSalle Street, by 107 in depth?

A. 107 in depth.

Q. Running east 107 feet?

A. Yes.

Q. Now, how high was the building, how many stories was
370 the building on that lot when you purchased it?

A. It was a six story building.

Mr. Mecartney:

Q. And the general character of it, was brick?

A. It was just a disreputable old building. It had no character. It was brick. It was in bad condition.

Q. It had been the Open Board of Trade Building?

A. Yes.

Q. And had been used as a bucket shop?

A. Well, no it was used as the Open Board of Trade room. It was a pit, just the same as they have in the Open Board of Trade.

Q. Now, which do you think it was that you paud, thirty or forty thousand dollars for that building?

A. Well, now I wouldn't say for sure on that, but I think it was forty thousand dollars. I know it was over thirty thousand dollars.

Q. You think it was forty thousand dollars?

A. Yes.

Q. Now, at the time that you purchased the Open Board of Trade, did you buy a lease on it, did you say?

A. No, I took a sub-lease.

Q. A sub-lease for how long?

A. Well, the original lease had run from twenty-five to thirty years, and I took the balance of it.

371 Q. Now, what do you say the lease was—the terms of the lease with which you took that property?

A. $11,000 a year.

Q. Right through for how long, for the 70 years?

A. For the 70 years with the privilege of 50 more at the same price. That was for the LaSalle Street end of it. The one that they were paying $2000 for. I didn't go through to Clark Street, you know.

Q. You constructed the Webster Building—you didn't go through to Clark Street?

A. No, the Kaiserhof has that.

Mr. Walker: The Kaiserhof has that leased. That is in evidence, by Mr. Knott.

Mr. Mecartney: You then constructed within the last year, is it, you constructed the new building there called the Webster Building?

A. Yes, sir.

THADEUS H. HOWE, resumed the stand for further examination by Mr. Walker, and testified as follows:

Q. Can you give me the totals in computation of your valuations on this property of McCoy's before the railroad came?

A. If you will give me a pad, I can figure it right out

372 here.

Mr. Walker:

Q. You may look at that memorandum if you have it with you?

A. What date?

Q. First, 1895, and then——

A. I figured the property worth approximately about $3500 a foot on the Van Buren Street frontage, which would figure it about——

Q. Does that make the 25 feet also, or only the lease?

A. No, I have it separated.

Q. You are now talking about the Clark Street front?

A. The 108 feet.

Q. All right.

A. About $380,000 in 1895.

Q. Was that the building?

A. No, the ground.

Q. All right, what value did you put on the building?

A. Well, as before stated, I don't feel competent to give a valuation on that thing. I said approximately between one hundred and one hundred and twenty-five. It may not be worth over seventy-five. I do not feel like giving you a value on that thing.

Q. Well, then, on the ground values, as to the ground, McCoy's interest in that would be what?

A. Two hundred thousand. I figured the leasehold which was——
Q. You figured the fee at a hundred and eighty thousand?
A. 6½ per cent. on $8,000, ground rent, 4½ per cent.
373 would be $80,000 valuation, that would leave two hundred in the leasehold estate without the building.
Q. Now, take the other 25 feet?
A. As part of the corner at that time, I figured it worth about $2400 a foot. That would make for the 25 feet about $60,000.
Q. That is in what year?
A. That is in 1895.
Mr. Walker: All right. Now, Mr. Howe, will you give us your figures in 1897 and 1898 after the road was constructed in the early part of 1898?
The Witness: As I said before, I considered the property increase along there about twenty per cent., which would make the valuation on the 108 feet from forty-two to forty-four hundred dollars or forty-four hundred dollars, forty-two to forty-four hundred and the 25 foot piece about twenty-eight hundred dollars, which would figure about $480,000 or $475,000 for the 108 feet and about $70,000 for the other.

Mr. Walker:

Q. That is the value in your opinion of the ground at that date?
A. Yes, sir.
The Court: Do I understand you to say that the 25 feet are about 2800?
The Witness: About 2800. I figured there is quite an increase there, there was, just after the road was completed.

374 Mr. Walker:

Q. If your figure says that that is wrong, that is an error?
A. That is wrong.

The Court: I thought he said it for 1897, but he says he did say it that way, that he had a later period in mind.

Mr. Walker: Then you would deduct from the amount of the leasehold fee the market difference, to get at McCoy's interest afterwards?
A. Yes, sir.
Q. And that would make how much on that lease, his interest in it?
A. About $300,000 in 1897.
Q. Then in 1897 on the other piece, including the building—now, on the ground—right on the ground?
A. Well, on that ground at that time, I valued the ground at $70,000 in 1897.
Q. On the 25 feet?
A. On the 25 feet.
Q. What, in your opinion, was the effect of the construction, maintenance and operation of this elevated railroad upon the property, Mr. McCoy's interest in it, in this case?

Mr. Mecartney: Objected to unless it be confined to the immediate market effects consequent upon the completion and putting in operation of the road.

375 The Court: I take it it is 1897?

Mr. Walker: Yes.

A. It increased the market value.

Q. You have given, without repetition, your values at that date. Now, what proportion, if any, of the difference, the increased valuation of 1897 and 1898, do you attribute above the 1895, do you attribute or in your opinion was caused by this elevated railroad and its effects?

A. Well, I considered over half of the increase on account of the elevated road.

Q. Have you an opinion about it, if you have an opinion about it, what was the rate of increase or decrease, if any, in the value from 1897 up to 1905 where you gave the value of 38 or $3,900 on the 25 foot strip and what was the——

Mr. Mecartney: Objected to.

The Court: Well, for the same reasons the court makes the same ruling. Objection is overruled and exception.

The Witness: What the value was——

Mr. Walker: You gave the value in 1895 and 1897, and the early part of 1898.

A. Yes.

Q. Now, I ask you what was the values up to 1905?

376 A. 1905, this morning I understood it was $3,800 to $4,000. It would be nearer $4,000 than $3,800.

Q. For which?

A. 1905.

Q. No, which are you talking about?

A. The 25 feet.

Q. The 25 feet. Now, how about the other?

A. Well, I should figure that was worth about $6,000 on Van Buren Street frontage in 1905.

Q. Which, in your opinion was the greater value, the property upon which the McCoy Hotel stood, the 95 feet on Clark Street or the Greenebaum property or the Mendel property, lots 20 and 23, of the same depth as McCoy's was, which was of the greater value?

A. The Clark Street property.

Q. Has there ever been a time when the Clark Street front was worth less than La Salle?

A. No, decidedly not.

Q. And which has been the more valuable through the period of time that you have been acquainted with this, the same amount of frontage on Clark and Van Buren or La Salle and Van Buren?

A. Clark and Van Buren.

Q. You say along in 1897,—now, get that date,—what was the difference, in your opinion, in value as between the frontage on La Salle Street and the frontage on Clark, say of 95 feet——

A. In 1897——

377 Mr. Mecartney: Objected to as involving a cross examination——

The Court: Well, I don't see how that is material, Mr. Walker. I don't see the materiality of it.

Q. What was the proportionate difference in value?

Mr. Mecartney: The same objection to this.

The Court: He may answer.

The Witness: Why, I considered Clark Street worth almost double.

Q. Well, now, Mr. Howe, has there been any time since the construction and operation of this elevated railroad when the property on Clark Street in which McCoys is interested, including 25 feet on Van Buren has been worth less than it was before the elevated railroad was built in Van Buren Street, in your opinion?

Mr. Mecartney: Objected to.

The Witness: No, sir.

The Court: Read the question.

(Question read.)

The Court: He may answer.

Mr. Mecartney: Exception.

The Witness: No, sir.

Mr. Walker:

Q. Upon what do you base your opinion, and give me what entered into it that this property was benefited in its market value, the McCoy interest, by reason of the construction and operation of this elevated railroad?

378 A. On account of the increased income owing to the extra traffic that was brought there over the elevated railroad. The possibility of advertising. Those were the main things. I don't think of anything else just at the present time.

Q. Upon what did you base your opinion that such a possibility exists?

A. Income.

Q. Yes.

A. Where the more people are the more business there is, and where the more business is the greater the rents are, and the greater the rents the greater the value of the property. That is the way that I always base values.

Q. How does the advertising features affect the rental values, the advertising features by this road, in what way, Mr. Howe?

A. Well, a man that occupies an office, and his business is——

Q. What floor are you talking about?

A. On the second floor, the second and the third floors are about the only floors that are affected.

Q. Yes.

A. It naturally advertises his business to the people that are going by on the train, just as if those people read the advertisements in the newspapers.

Cross-examination.

By Mr. Mecartney:

379 Q. So when you leased a cigar store in the down town district that rental was fixed on the basis of the front foot ground value, was it?

A. I don't know how the other fellow fixed it. I know how I have figured values, though.

Q. Then you figured your rental for cigar stores on the front foot value of the ground, did you?

A. Nothing at all. No, sir. We always figured the value of the store upon the amount of traffic going by that corner. We made a business of counting the people. The same way as we count lumber, as a little indicator, before we ever rented a store, to find out what the traffic was.

Q. What did you refer to a while ago when you said four to four and a half per cent.?

A. At different periods the rate of income that is accepted on properties changes.

Q. I didn't ask you that. What did you refer to when you said four to four and a half per cent. You used the term four to four and a half per cent. in renting stores. What did you refer to?

A. If I said that, I didn't mean that. In arriving at the value of the thing, I figured on the basis of four to four and a half per cent.

380 Q. What did you refer to when you said the "thing," the store or the building or the ground?

A. We were paying ten thousand dollars for a store.

Q. Can you tell without giving an illustration?

A. I can't very well tell you unless I tell you in my own way. Now, if we paid ten thousand dollars for a store that was 25 feet frontage, a year, we were paying $400 a foot frontage, were we not?

Q. Is that your interpretation of it?

A. That is the way we figured it.

Q. What does the fellow in the next store, above your store, if he pays five thousand, how much does he pay a front foot?

A. I am not figuring on the other fellow. I figure on what the ground floor takes in.

Q. That is the extent of your experience in ground values in the nineties?

A. Yes, sir.

Q. Isn't it a fact that down town property from the beginning of 1887 to 1895 advanced fifty per cent. in value as a rule?

A. It advanced fifty per cent.

Q. Yes.

A. I think so.

Q. Isn't it a fact that Van Buren Street in that period advanced far greater than the down town property on an average?

A. I think so.

381 Q. And what was the reason you would give for the advance in Van Buren Street in particular?

A. In that particular time?

Q. Yes.

A. Well, along in just about that time the Old Colony Building was put up, if my memory serves me right, and there were some improvements which came with Seigel & Cooper's store, and one thing and another that started a movement southward.

Q. Do you remember a very great increase in property along in 1887 and 1888 in the districts east of State Street and from Monroe and Adams south towards the new Auditorium, do you remember a very great advance in property there?

A. Well, not such a wonderful advance. I lived there at the Richelieu Hotel there at that time. I don't remember such a wonderful advance at that time.

Q. Do you remember that Van Buren Street and the street north of it, Jackson Street, had doubled in value within two years at that time, from the value of 1887 to 1889?

A. What do you mean, Adams Street?

Q. Adams and Jackson and Van Buren and Michigan and Wabash and the entire district from the Auditorium north from that, three or four blocks?

382 A. Well, previous to that time it was very low. There was hardly any value in it. It did go up very rapidly on that basis. I will grant you that.

Q. How many properties did you buy leaseholds on or take leaseholds on on the Loop, facing the Loop or the elevated roads on the south side here?

A. You mean just facing the roads?

Q. Well, I mean with the elevated roads in front of them?

A. Well, the two corners of Lake Street and Fifth Avenue, the Times property and the adjoining buildings, with a total of four buildings, and the property back of the Briggs House.

Q. Which is the Geohegan piece?

A. Yes. I think that is all the properties that I have got long term leases on the Loop proper.

Q. Well, you got those within a space of how many years?

A. Since 1903.

Q. What elements did you consider in making up your estimate as to the question of benefit or damage?

A. You mean the value that I arrived at in reference to the property?

Q. Yes, the value, when you said the effect was beneficial, I mean,

A. On account of it bringing the extra people there who 383 would not otherwise have come. Naturally where the people are, the producing power of that property increases, and as the producing power increases, the value of the property increases, because everything is based on income, when it comes to property.

Q. I have asked you for elements.

A. The people is the main thing.

Q. Where the people come then your rents will be increased, is that it, as you said?

A. Yes, sir.

Q. Where the people are, there the real estate owners' treasure is, as it were, is that right?

A. That is the way I figured it.

Q. Now, what other elements did you consider outside of advertising?

A. I cannot call to mind anything at the present time.

384 The Witness: Why, I have always found out in figuring, as I said before, that as the population of the city increased, the number of people let off of the loop has been more than double to the increase. In other words if the population increased ten per cent. the people that got off the loop showed twenty per cent. increase.

Q. Your idea is, if I get it, that as the population increased ten per cent. the people that got off the loop——

A. And on.

Q. —increased twenty per cent., that is your figuring, is it?

A. In other words, I figured that over half the increase in population or increase in traffic around any section was on account of the elevated road, so I give over half the increase in the value on account of the elevated road, that is the way I come to my way of figuring, and that has been my experience with my own properties.

Q. Now, is there any other element that you figure on this increase?

A. Yes.

Q. Well, what other elements?

A. Well, this changing—the through routing, has changed certain locations.

Q. That is in the last six months.

A. Yes.

Q. I want you to eliminate that. We are not asking you

385 about the last six months. I am asking you, and confining the questions to the years 1894, and 1895, and immediately before the loop was constructed and immediately afterward. Now, what other element is there?

A. That is all that I can think of.

Q. Does better times increase the traffic on public transportation facilities?

A. I don't think that makes very much difference.

Q. Yes.

A. Whether it is dull times or good times, as far as the transportation is concerned. It might affect it in a small way, but I don't think it affects downtown business property?

Q. Do you remember the rise in stocks in 1898?

A. I never played the stock market at all and I don't pay any attention to it. I know business increased at that time, and I was busy attending to other things.

Q. Now business in the down town district increased at that time very fast, very suddenly, didn't it?
A. Well, I don't know how suddenly it did, but it picked up.
Q. I will ask you if that has any effect on the market value of this property?
A. Why, it gave all downtown property an elevated tone,
386 but most everything downtown was in the hands of strong people.
Q. Does the "elevated tone" increase market values of property?
A. It naturally does.
Q. How much did this "elevated tone" increase the value of this property at that time?
A. Why, I don't know. I had not considered that at all. I know that even during the year——
Q. Don't you consider that as an element?
A. I don't think property values increased any during the hard times of 1893 and 1894 because, as I said before, it was in the hands of strong people, and the market stayed about there, so any increase in that price, you could not give credit to the times.

Mr. Mecartney: I move that the answer be stricken out.
The Court: It may stand.
Mr. Mecartney: Exception.

Q. In fixing the increase in value of this property or its beneficial effect, what did you consider as to the loop, the entire loop, or a portion of it?
A. Why, I took the loop in consideration as a whole; because they all went around there, the traffic they brought there.
387 Q. Then you took the traffic, all the traffic which the loop took around the place, did you?
A. And dropped at that particular point or went on at that particular point, and my experience——
Q. Well, would the traffic that was dropped at the station east of the station there have anything to do with this property?
A. Well, they are only one block apart each way, and they naturally would get the benefit from both of them, to a certain extent.
Q. Well, other stations around the loop have any effect, the travel that get on or off at other stations, have any effect on this property?
A. Why, the loop, as a whole, threw a great many extra people down there and it naturally helped all property within the loop.
Q. How much, in your judgment, did the loop throw, or how many extra people, in your judgment, did the loop throw there at this property, at this point or any other point or all points around the loop, and the downtown property, in the downtown district?
A. Well, I would have to give seven or eight answers to that question, I think. I think at this particular point, that there was
388 at least double the amount of people, I should say, passing that point that there would have been if it had not been for the loop structure.

Q. Passing down or coming to it, the elevated structure?
A. Well, both ways.
Q. That is getting on or off?
A. Getting on or off.
Q. That is to say that the elevated loop structure increased the traffic. That is the people that passed those premises?
A. I think it about doubled up.
Q. Did you consider how many people got on or off that came by these premises from the preexisting railroads?
A. No, no.
Q. Did you ever make any effort to find out?
A. No, no.
Q. Do you know or have you any way of estimating the number of people which the downtown loop brought downtown, which the other roads would not have brought downtown?
A. No.
Q. Have you any estimate that you could use, any way of estimating it?
A. No.
Q. Then you can't estimate it, even on the downtown district generally, can you?
A. Only from my experience and observation.
Q. Well, whatever you use, you can't estimate it on the downtown district, generally, can you?
389 A. Estimate it, generally, no, I cannot.
Q. Well, how can you estimate the effect of all that travel brought by the loop in the downtown district to this particular property?
A. I can't.
Q. You can't do it?
A. No.
Q. You just have to guess at it, don't you?
A. No, I am not guessing. I say I can't do it.
Q. If you are not guessing, can you give a method by which you arrive at it.
A. Arrive at what?
Q. Arrive at the fact that double the people are brought past these premises by the loop there from what had passed there before?
A. Well, I was around there before the loop was there and I have been around since the loop was there.
Q. Is that your method of arriving at it, to say "I was around there before and there afterwards"?
A. And my experience in business coming on the street all the time, all over the loop.
Q. Aren't you guessing from your experience——
A. No, I don't think I am guessing. I am giving you my opinion from practical experience and what I know.
Q. Exactly. Now we will find out what you know about how many people passed there before and how many passed there
390 after?
A. I don't know the number. All I know is this, [illegible]

my experience and from what I have seen, that after the loop was completed and in operation, points like the corner of Clark and Van Buren street, or right in front of these stations, where there was one person passed before, there was generally about two passed afterwards. That has been my experience with cigar stores that I have had. At Fifth avenue and Randolph I had a store. I have had practical experience in it. It is the traffic.

Q. That is what you are guessing at?

A. That is the only way I can base my opinion.

Q. Did you allow or make any estimate of how many people were attributable to population increase, increased population of the city?

A. I said before that I considered that——

Q. No, no. Just yes or no. I prefer to have you answer yes or no when you can.

A. Yes.

Q. Did you make any such allowance?

A. Yes.

Q. For increase of population?

A. Yes.

Q. How much was that allowance?

A. I said I thought over half the increase was attributable to the elevated road.

Q. That is not my question. If you based this estimate upon experience—of people passing before at a given point——

A. Less than half.

391 Q. —and the people passing afterwards——

A. Less than half.

Q. Less than half what?

A. Less than half of the increase was on account of the increase in population.

Mr. McCartney: Did you allow anything then for other travel facilities existing?

A. Well, they were there before.

Q. Yes, they were there befo e.

A. Yes.

Q. Well, there were some other afterwards—there were some there afterwards, too, weren't there?

A. Yes.

Q. And changes made from time to time?

A. Yes.

Mr. Mecartney: I will repeat the question in this form:

Q. Please look at the photographs there——

A. I have looked at them.

Q. —and see if you can find suggested by them, some other elements upon which you can base your estimate of market effect on these premises, from the railroad in question, other than those you have mentioned, increase of traffic, and advertising?

Mr. Burns: That is objected to.

The Court: He may answer if he can.

The Witness: Is it your idea if that structure was there
392 and was not used for anything, or what are you trying to get at? I can't understand your question. It certainly don't add to the value of the property with the exception that it brought the people there.

Mr. Mecartney: I want to find out, what do you mean, when you ask me what do I mean? I am saying are there any other elements that are suggested to your mind in measuring or estimating the market effect on this property from the construction and operation of that elevated railroad, other than those you have mentioned heretofore?

A. I do not think this building of the elevated road affected the value of the property at this particular point, if that is what you are trying to have me answer.

Q. I asked you if there are any other elements that you considered in making that answer?

A. I can't think of any. I don't know.

Q. Can't you see anything?

A. No, I don't see anything.

Q. Do you see that structure there (indicating on photograph)?

A. Yes, I see it.

Q. Well, what effect does the structure have upon the use of the property, if any?

A. None whatever.

Q. None at all.

A. None at all.

Q. I say, what effect does the operation have upon the use
393 of the property, the operation of the elevated structure have on the use of the property?

A. None whatever, except for a hospital, possibly.

Q. What effect would it have for a hospital?

A. It might make a noise, the same as a wagon running over a cobblestone pavement.

Q. Have you any doubt about the elevated railroad making a noise?

A. My office is right alongside of it and I never hear it.

Q. Well, are you hard of hearing?

A. I don't notice it.

Q. Did you select this purchase on Fifth avenue made by you on account of the benefit of the noise or of the structure in the street in front of that property?

A. I took that on account of the elevated railroad being there and considering it the best part of the property to buy.

Q. Five or six years after the road had been there?

A. Yes, sir.

Q. And nobody else had found out its merits before you tried to buy it, apparently?

A. Good things are turning up every day if you keep your eyes open.

Q. Now, will you tell me whether you think the structure
394 in that street and the operation of trains is a benefit to or a damage to the property?

The Court: Independent of any advance in population is what the counsel means, or traffic.

Mr. Mecartney: Or traffic or anything, is that a benefit or a damage to the property?

A. I cannot conceive of any such thing being allowed in a city, trains running through with nobody on them, and not stopping.

Q. You cannot conceive of that?

A. No, I could not.

Q. You cannot conceive of that structure there being closed up and people not going on it or getting off of it, without the use——

A. No, I cannot conceive of a city allowing you to run through the center of the town, unless it was used.

Q. I will ask you again, to eliminate from your mind, any estimate of the particular market effect of this property arising from increased traffic, and confine yourself to the structure and its operation in front of this property?

A. Without any benefit——

Q. —in front of this property and within the block in which the property has its ordinary street easement, is that alone a benefit or a damage?

395 A. Well, I am trying to find out whether you mean if that road was running there and was not carrying passengers, or anything at all, just simply in the street?

Q. Not carrying passengers, but you eliminate any market effect from the passengers?

A. I can't separate the two. I can't conceive of such a thing.

Mr. Mecartney:

Q. Suppose there was business property there, and there was no station near enough to furnish any additional passengers or trade facilities, could you imagine a market effect from that railroad on adjoining property in that condition?

A. Unless there was—I know some railroad properties—some properties are worth more with the railroad than without. It depends on conditions. If it was a switch track, it is worth more money on the railroad than off of the railroad. It depends on conditions.

Q. Then you could consider a switch track condition without thinking of passengers, could you?

A. I consider the conditions as they are.

Q. Could you consider the effect of an embankment of a steam railroad in front of the property without measuring in some market facilities or advancement by reason of passengers, can you think of such a thing?

A. Why, certainly. All those things have their effect.

396 Q. Then why can't you consider the effect of this structure and the operation of trains in front of it, assuming that there are no passengers, and no stations provided for near enough to this property to allow the passengers to be unloaded or loaded?

The Court: If that was the case. That is the question.

The Witness: Why, if that was the case, why, of course it would affect it, but I cannot conceive of an impossibility, or something that would not be allowed.

Q. Would you say it was beneficial, the structure and the noise?

A. I certainly would not.

Q. Now, will you estimate or try to estimate the effect?

A. No, I will not.

Q. Would you admit that it was damaging?

A. I would not admit anything on that. It certainly affects something. I know I wouldn't want it in front of my building if it was not put to any use.

Q. What in your judgment did this property, this elevated loop railroad, benefit, what district?

A. You mean outside of the loop or in the loop or what?

Q. I mean wherever it was benefited.

A. Well, I think that it benefited all property within the loop.

Q. What other districts got any benefit?

397 A. Well, the people in the outlying districts got a benefit from being able to get down in the center of the town by the increased transportation.

Q. Did their property get any benefit from it?

A. I don't think so, except in certain cases. I will qualify that. In certain centers, why, it increased the value of property, on account of having good transportation. That is a general thing all over the country.

Q. Take the downtown district, what do you call it, that was benefited by the loop, how far south does it run?

A. I have answered that question.

Mr. Walker. Harrison street he said.

Q. Did you ever try to estimate the total effect or advance of the property in the downtown district, and then divide up those properties, did you ever try that?

A. No.

Q. You have not made any division at all, have you?

A. I had no occasion for making any division.

Q. That you just started with the fact that this property was benefited from increased travel facilities, and there you ended?

A. Oh, no.

Q. Well, now, tell me where you began and where you ended?

A. I took everything into consideration. Values of property and everything else, the increase in population, and every-

398 thing else, the whole downtown district property, and that which I owned myself, and all.

Q. When you speak of the downtown loop benefitting property, it is only through its established business that it benefits it, isn't it, and in connection with established business, is it not?

The Witness: Read the question.

(Question read.)

The Witness: Why, as I have stated before, it brings extra people there.

Mr. Mecartney: But you can't answer the question yes or no.
Mr. Walker: Maybe he don't understand the question.
The Witness: I don't thoroughly understand the question. If I had a vacant lot that was bringing in—that was not bringing in a dollar, and the elevated road running by it so I put up a building there, I would make that building produce an income in proportion to the amount of people that was brought there.

Mr. Mecartney:

Q. And therefore the loop would be a benefit to your property?
A. More so that if it was not on the loop.
Q. Then wouldn't the building of that same building and the renting by you to tenants who established their business there also benefit the market value of the entire loop——
Mr. Walker: What do you mean by the "loop"?
Mr. Mecartney: The entire loop is held by stockholders, and owned by a corporation.
The Witness: You are talking about the railroad?

Mr. Walker: That's objected to.
The Court: You mean the railroad?
Mr. Mecartney: Yes.
The Court: I sustain the objection.

Mr. Mecartney: How much additional income would that property, in the illustration that you have given, produce to the loop road then?

Mr. Walker: That's objected to.
The Court: Objection sustained.
Mr. Mecartney: Exception.

Q. Now, Mr. Howe, you may assume that the elevated road brought past those premises in 1898 the same amount of travel that it actually did, and that immediately before it had been finished there had been travel facilities street car facilities, and other public travel facilities, that had been removed from this property, so that the traffic passing past the property or getting off at the property afterwards was the same as before, and the only change that was made was the fact of this structure and its operation placed in front of the property, could you tell us then how much the property would devote afterwards as it was before other conditions remaining the same?

Mr. Walker: I object to that. I do not understand it at all. That is the ground of my present objection.

A. You mean to say that if the surface roads before the elevated was constructed were taken off and then the elevated did not bring down any more people, than the surface road did, would it make any difference in the property?
Mr. Mecartney: That is right.
A. If there was not any change it would not make any difference. It would not make any difference whether I rode across the street on a wheel barrow or a street car.

Q. Or a one hoss shay?

A. No, it would not make any difference.

A. In other words if you could take everything away from this building.

Mr. Mecartney: I didn't say that.

A. That is the same thing.

Q. You take away from that building the same amount of travel benefit as—by reason of changes in the neighborhood and other travel facilities as the elevated railroad brought to it, and assume that the building has not got any more people coming to it or by it than it had before, and the only change being that the street in front of the building had that structure on it, and its noisy
401 operation to remain forever, would that property be worth less or more than it was before, other conditions remaining the same.

A. Well, I will have to ask you, Mr. Mecartney, if this is what I am to understand, that if that elevated road was not there, and you could land just as many people by or in front of this building, without the elevated road being there, whether it would be better than it is with the elevated road there. Is that the idea?

Q. I will let you answer that.

A. Is that your question?

Q. That is the idea, now. Answer your own question, please.

A. I think it would.

Q. Would what?

A. It certainly would not increase the value of the property.

Q. Would it decrease the value of the property?

A. Well, it is away from it there.

Q. Cannot you answer your own question?

A. I said that if it was taken away and they came there, just as many people there, without getting off there, what effect it would have on the property, that is what you were trying to get at, wasn't it?

Q. No.

A. What was it then?

Q. Supposing that elevated railroad was taken away to-day in front of this property?

A. Yes.

Q. And it had the same amount of travel benefits that it
402 has to-day, from any and all sources, would it be worth more or less?

A. I do not think it would affect the value of the property at the present time.

Q. Then you do not think the removal of that structure in front of that property would help it a bit?

A. Not at all. I made that statement in regard to my own property at Fifth avenue and Washington. I would sooner have it there than not.

Q. But I am asking you to separate it?

A. Without the traffic of course it would have its effect.

The Court: He wants to know, everything else being equal, how

ing that structure in the street, and that noise in the road, if there were no benefits from travel, would it affect that travel?

A. Certainly it would affect it, but I could not conceive of it.

Mr. Mecartney: Now you understand it. How much effect would it have upon the value?

A. I could not estimate it.

Q. Couldn't you estimate it as well as anybody else?

A. I would not undertake it. I cannot conceive of things of that kind.

Redirect examination.

By Mr. Walker:

403 Q. Mr. Howe, in all your experience with real estate or anything else did you ever see an elevated railroad structure like this in a city with trains running around the circle that never stopped?

Mr. Walker: Well, running around—going by a given point where normally there would be a station and never stop?

A. No, sir.

Mr. Walker:

Q. And did you ever have any experience in real estate or any place on earth or do you know any place on earth where there is a railroad——

Q. —built for urban traffic within the city, an elevated railroad where they run trains and do not carry passengers?

A. No, sir.

Mr. Walker: Let me finish this question, Judge, just this one question, it is my last.

Q. —any place where an elevated railroad has been constructed and has been permitted to stand in any highway of any community without the operation of trains thereon.

Mr. Mecartney: I object to that.

The Court: Sustained.

To which ruling of the Court the defendants by their counsel then and there duly excepted.

Mr. Walker: Is there anything in your experience that
404 would give you any experience upon such a subject matter?

Mr. Mecartney: I object to that.

The Court: He may answer.

A. Any——

Mr. Walker:

Q. Anything within your experience or knowledge that would give you any knowledge or experience upon such a subject on a railroad in a highway, a structure without any use?

A. I cannot conceive of anything of that kind.

Q. I asked you if there was anything in your experience that would give you any knowledge on such a subject?

A. Either for or against it?

Q. Yes.

A. Yes.

Q. Assuming it was in the road or highway, without operating trains?

A. I could not conceive of a thing of that kind.

Recross-examination.

By Mr. Mecartney:

Q. Is it for that reason you cannot assess a man's damages without assessing his travel benefits?

Mr. Walker: I object to that.

Mr. Mecartney: That is based right on it.

The Court: He may answer.

To which ruling of the Court the defendants by their counsel then and there duly excepted.

405 A. Is that a law question that you are asking me, Mr. Mecartney?

Mr. Mecartney: I didn't hear you.

A. Is that a law question you are asking. I do not quite understand it.

Mr. Mecartney: Repeat that question.

(Question read.)

Mr. Mecartney: Change this: Is it for that reason you cannot estimate his damage without estimating his travel benefits?

The Court: That is the experience you related to Mr. Walker in the last question. It refers to the answers you made to Mr. Walker, this question.

Mr. Mecartney:

Q. Is it because of your experience that you cannot estimate a man's damage in a case like this without estimating the market value of his travel benefits?

A. Well, I have not considered that I cannot——

Q. You can say yes or no.

A. Well, I don't want to say yes or no unless I know what I am saying. If I cannot say yes or no without an explanation I won't say it. I cannot answer the question intelligently because I do not understand it.

Q. You do not understand it?

A. No, and I will not answer it.

406 Q. I will pass it if you do not understand. If you were called upon to assess for purposes of assessment in the down-town district the cost of this elevated railroad to be spread over property from Harrison street north in proportion to the benefits that each property should receive from the construction of that railroad, and you were called here as a witness to estimate the amount of each abutter's damages, and then in a separate way to

estimate the proportion of the total cost and assess it back to him, could you do that?

Mr. Walker: That is objected to.

A. I have never had any experience and I do not know whether I could or not.

Q. So you probably could not estimate damage without——

Mr. Walker: I object to that.

A. I do not know. I have not given it any consideration.

ALBERT L. STRAUSS, called as a witness on behalf of the defendants, having been first duly sworn, was examined in chief by Mr. Walker and testified as follows:

Q. What is your busines, Mr. Strauss?

A. Real estate broker.

Q. And how long have you been engaged in the real
407 estate business and business that involved the question of real estate, mortgage banker or anything like that.

A. I have been identified with the real estate business pretty nearly twenty years.

Q. Upon what basis were leases made, if you know, long term leases from '93 up to '95 and '6, where they were made? I speak of downtown property.

A. Five per cent. was about the ruling rate.

Mr. Mecartney: I would like him to fix the time he has been in the real estate business.

Mr. Walker: He has been from '93 on—I mean——

A. I said I had been identified with it since the early '90's. I have only been actively engaged in it since about 1897, that is, operating that line of business and none other since 1897 or '8.

Q. Then give me your negotiations since 1897 in a general way, what properties have you handled and sold and negotiated—and give me generally what amount.

A. You mean in dollars and cents?

Q. Yes.

A. Somewhere between fifty and a hundred millions.

Q. Will you give me some of the properties quickly?

A. Well, on the loop I negotiated a 99 year lease and financed the building project on Van Buren and Franklin street, that is, the elevated abuts it.

408 Q. Which property is that?

A. The northeast corner. I negotiated a 99 year lease on the property known as the Omaha Building now known as the Fort Dearborn Building; on the corner of La Salle and Van Buren, the southeast corner; I sold the property at Plymouth place and Van Buren, the northeast corner, 59 by 80, to William N. Eisendrath.

Q. All right. Now, Mr. Strauss, you have examined this property. You know the property in question in this case, do you not?

A. Yes, sir.

Q. And you know what the condition of the title is as far as this case is concerned—the east twenty-five feet at the time this railroad was put in operation, and the fee to Mr. McCoy, and the balance of the 99 year leasehold interest, calling for $8,000 a year rent, after 1893, running 89 years, and the building in Mr. McCoy?

A. I know the conditions.

Q. What, in your opinion, was the front foot value of the 25 feet, the east 25 feet of lot 20 and 23, that he owned the fee of, per front foot, we will say, in 1893, '4 and '5, before the road was—this road was built in 1896. What was the value in those years?

The Court: Independent of the corners?

409 Mr. Walker: Yes, as a separate piece without connection with either the La Salle or the Clark street frontage?

A. The 25 by 95, isn't it?

Q. 96 77/100.

A. Well, it broadens out a little as you go west.

Mr. Mecartney: You said '93, '4 and '5. Now you say '93.

Mr. Walker: Just for shortening it I make it '93, just take the one year.

A. Independent of the corner?

Q. Yes, in a separate owner, just the ground?

A. I should judge that property had a value of about thirty-five to thirty-seven thousand five hundred dollars, independent of the corner, talking about the naked ground.

The Court: Thirty-five to thirty-seven.

A. Thirty-five to thirty-seven five hundred along from '93 to '96.

Mr. Walker:

Q. That means the entire land?

A. I am talking about the 25 by 96 and a fraction.

Q. That is the total value of the 25 by 96 and a fraction?

A. I am not undertaking to pin myself down to one year. This is as my recollection goes.

Q. What would you say the twenty-five by 96 77/100 would be worth in connection with the leasehold on the corner in Clark street in that same period in that owner?

410 A. Used in conjunction with it or independent of it?

Q. Yes, being capable of use as part of the corner.

A. Well, used in conjunction with it I should believe it had a value somewhere in the neighborhood of $50,000.

Q. Now, Mr. Strauss, that building occupies pretty near the entire ground of that twenty-five feet except where you get back forty-five feet it is—there is an inset of some four feet so it is only about twenty-one feet wide after the depth of forty-five feet. The building was built in 1894 or '95 on that 25 foot strip. What would you say the building was worth as part of that ground in 1895?

Mr. Walker:

Q. You know the buildings?

A. Yes. What are the dimensions of that building, 25 front—what is the depth?

Q. Twenty-five by forty-five, and then the balance of the building is twenty-one by—forty-five from ninety-six is——

The Court: About fifty-one.

Mr. Walker: About fifty-one.

A. The building covers the entire lot.

Q. Yes, with the exception of that area of four feet, the depth of 25 feet.

A. The value of that building was somewhere between twenty-five and thirty thousand dollars at that time.

411 Q. I want to get the whole valuation of the ground. Then I will separate the two.

A. Somewhere in the neighborhood of between three hundred and twenty-five and three hundred and fifty.

Q. Before I get to that, however, asking you the value of it, what proportion of that three hundred and twenty-five would belong to the fee owner or—at the end of the lease, and what to the lessee? What was the value of the lease?

A. You mean would belong to the fee owner at that time or at the end of the time?

Q. No, at that time. What would you capitalize it? He got $8,000 a year rent.

A. I think the owner would have—the owner of the leasehold would have to figure it about $160,000.

The Court: One hundred and sixty?

A. Yes. Capitalizing the fee on a five per cent. basis, the then current rate.

Q. Assume that that was built in 1883 or 1884, what was it worth as part of that ground in 1885, what was it worth, yes, 1895 is the date?

A. The building was erected in 1883?

Mr. Walker: I said 1883. And I should judge 1895, the building had a value of about $100,000.

412 Q. I call your attention now to 1897. The elevated railroad was built in the street in 1896 at that point, and put in operation in October, 1897—between—prior to the first of November, 1897. Now, what in your opinion was that property worth, beginning in the same way with the 25 feet, and then the leasehold, in 1897 and '98, after the elevated road was put in operation?

A. You want my opinion of what it was worth, or what the market value was at that time?

Mr. Walker: Well, I didn't think of that. I will ask you,—assuming that the 25 feet at that time in 1897 was in another and separate owner and not in the corner on either La Salle or Fifth avenue, but in someone else.

A. Yes.

Q. In 1897 or '8.

A. I should say that that, independent of the corner holding, was worth at least fifty thousand dollars directly after the loop was constructed and the trains in operation.

Q. And independent of either corner?

A. Independent of the corner.

Q. Fifty thousand dollars alone on the 25 feet in 1897 and in 1898 after the loop was put in operation. Now, with the corner, what do you say the land was worth, the land?

A. Somewheres between sixty-five and seventy thousand
413 dollars in conjunction with the corner being used with it.

Q. Would you make any material change in the value of the building on either the leasehold or the twenty-five feet from 1895 up to 1897 or '98?

A. Simply nominal for depreciation in wear and tear.

Q. What was the whole ground worth, all title being in the same person, I mean, of the leasehold, 118 on Van Buren, by 95 feet, on the same date. I speak now of the 95 by 108. We will divide the fee from the lease afterwards. I want to get the total value of the ground, any interest anybody could have in it, the total.

A. The corner was worth a minimum of $400,000, and from that upwards.

Q. What would that make the value of the fee, if it were deducted from this $400,000 to get McCoy's interest at that time?

The Court: The value of the fee taking into consideration the leasehold interest.

Mr. Walker: Yes, that is what I mean, taking into consideration the leasehold interest.

A. Somewhere between 180 and 200, the value of the fee in the Keeps in the latter '90's.

Q. The rest of it would be the leasehold?

A. Yes, sir.

414 Q. In your opinion in the latter '90's, was the building adequate, the improvements adequate, for this property?

A. They were still adequate in the latter '90's.

Mr. Walker: I am afraid that the law limits me to market value, but have you an opinion as to what the effect of the road was on its market value at that time, its construction and operation?

A. I have a very decided opinion.

Q. Will you please state what that opinion was?

A. That it was very beneficial to the property.

Q. You mean that it enhanced its market value——

Mr. Macartney: Let him answer.

A. That it enhanced its real and its market value.

Mr. Walker:

Q. You have given me your idea of its market values before and after. You draw a distinction between what you call the real value and market value. I got the market value before and the market

value afterwards, and I know the difference by mathematics between the two figures.

A. It is a hard thing to determine what the market value of downtown real estate in Chicago is, because as a rule you cannot test the value so as to have a knowledge of what its real general market value is. I have known property to sell at a price we will say of a million four hundred thousand dollars, and one hour afterwards I
415 have offered a man a million eight hundred thousand for it. The fact that it was sold at a million four hundred thousand dollars did not determine that that was its real market value. I draw a distinction between real values and market values. All men are not competent to test the real value of downtown property.

Q. I see what you mean by the distinction. Well, I am afraid we will have to stick to market values, but I might ask you this question, what you consider the real value of this property as distinct from the market value, would it make the value lower or higher?

A. Why, in determining its real value, I would look into the future and try to estimate what future benefits would arise from the construction of this loop and in that way undertake to get nearer to its real and true value.

Mr. Walker: I meant to say that, Judge. That is what I propose doing. I do not want to get in anything that is error. Pardon me. Now, Mr. *Mr.* Strauss, what proportion if any o- the enhanced value of the property that you have given between 1895 and 1897 if any of it is in your opinion due to the construction and operation of the elevated road at that point in Van Buren street, and the loop?

A. Between those two years?

Q. Yes.

A. Most of it.

Q. Has this property at any time, since the construction
416 and putting in operation of the loop been worth less than it was in—before the loop was put into construction and operation?

Mr. Mecartney: I object to that.

The Court: That is a general question.

Mr. Walker: The same one you permitted.

The Court: He may answer.

Mr. Mecartney: Exception. It has never had a less value. It increased steadily.

Q. Yes. What was the increase, and then I will see if you have an opinion as to what proportion of that was due to the elevated railroad.

The Court: He wants to know the general percentage.

Mr. Walker: Yes, that is what I want to know, the general percentage of increase up to 1905, your idea of it.

A. I should say that the property, judging from values in 1905 to-day's value, had an average annual increase of about eight to nine per cent.

Q. Now, was there any proportion of that due in your opinion to

the maintenance of the loop and its operation in Van Buren Street If so, what?

Mr. Mecartney: The same objection, and the same ruling to all this line of testimony, as going beyond the time.

417 The Court: Exception allowed.

A. At least fifty per cent. and possibly up to 75 was due to the loop having been put in operation.

Mr. Walker: Mr. Strauss, will you be kind enough to tell me upon what you base your opinion that the construction, maintenance and operation was a benefit to the market value of this property?

A. Well, the main cause was the greater number of people that it dumped within its confines; also that at this particular spot, within a block either way there were two stations, making this piece of property more or less a terminal point, and naturally placing in front of the property and contributing to the property a larger number of people than has ever before passed there, and in increasing numbers as years went on, increase in numbers thrown there because the town increased in size due to the loop having gone in there, and there were more of them dumped within the loop than without the loop.

Mr. Walker: What I want to get at, I know he would attribute the increase to that reason, but I want to get at what makes him of the opinion that that reason that he gave——

The Court: Upon what he bases his opinion.

Mr. Walker: Yes, whether it is upon his transactions or

418 experiences.

A. Well, I base it upon my knowledge of the values which were before and which existed afterwards, on account of the concentration which was made by the loop having gone in there, concentrating everything within a few square blocks, causing a greater number of people to be thrown in there, causing the erection of high buildings which never might have been erected had not the people been dumped in there, and concentrating all the larger institutions right within that narrow area.

Q. No, there has been no change in this building, but I mean, has there been any feature added which might be made to produce income if utilized?

A. Yes.

Q. What?

A. Oh, in some instances the second floors have been used instead of the ground floors for retail purposes. They have used their windows for advertising purposes.

Q. They have made mercantile floors out of them?

A. Made mercantile floors out of them, and also made what would otherwise be called show windows on the second floors.

Q. You observed that yourself?

A. Yes.

Cross-examination.

By Mr. Mecartney:

419 Q. Had you made any down town sales or leases prior to 1900?
A. Yes, sir.
Q. How long prior, the first one?
A. I believe in '97, either '97 or '98.
Q. So that before the loop was constructed you had not made any sales in down town property or made any long term ground leases?
A. No, sir.
Q. Have your estimates been based here, that you have given here, on the real value of this property or the market value?
A. The latter estimates are on——
Q. You gave estimates in 1895 on this property, the McCoy property or properties. Is that what you call real value or market value?
A. No, I aimed to confine myself to market values. I would have paid more than the market value.
Q. When you gave those estimates for 1898 was that the real value or market value?
A. In 1898? In those days I went altogether by market values.

Mr. Mecartney:

Q. What other causes do you say contributed to increase the value of this property after 1897 and 1898 than the elevated road benefit which you mentioned?
420 A. Why, the natural cause of the natural growth of our city, and the elevated has always been the leading and moving cause on account of throwing people right in that one district.
Q. Do you think of any other element now, or are there any other elements than those two?
A. That have increased its values?
Q. During the years, you said 1897 to 1905.
A. Not excepting causes which were largely due to the original cause of the loop going into effect.
Q. You cannot think of any other ones. Was business constantly increasing since the boom you mention up to 1905?
A. Yes.
Q. The business of the city was increasing in volume?
A. Naturally.
Q. Was it improving in condition as well?
A. What do you mean by improving in condition?
Q. Well, business conditions improving, it seems to me to be a common term?
A. Yes.
Q. Had other facilities for public travel increased during that same period?
A. Up to 1905?
Q. Yes.

A. None, outside of the greater use of the automobile.

Q. Was there an increase particularly in Illinois Central suburban travel during those years coming to Van Buren and Randolph
421 Street stations?

A. I think so.

Q. Have you tried to estimate in figuring your estimate and separate that particular cause, when you say that the loop caused fifty per cent. and may be 75 of that increase?

A. Why, I think the loop was largely responsible for that cause. It created the congestion, the concentration, and forced those people to come to within the loop to transact the business.

Q. So that you attribute the cause of increased suburban travel to the loop too, do you?

A. In an indirect way, very largely.

Q. Can't you indirectly attribute the fact that a good many more people came into the city from the roads to the benefits which the loop gave?

A. Well, had not the loop gone in I figure that they would have spread more. They would have spread within a greater area.

Q. How would that have affected or lessened the effect upon the Van Buren Street property here, McCoy's Hotel?

A. It would not have had the rapid increase that it has had.

Q. In what way wouldn't it have had it?

A. Because the people would have been thrown into a larger area instead of being concentrated at a given point, or within a
422 given narrow—within a given small area.

Q. Then you don't consider anything to the south like railroad property of itself as tending to hold trade at Van Buren Street and north of it, do you?

A. I consider it as contributing to it. I do not consider that the railroad terminals to the south would tend to hold the values of property within the loop. They contribute to them, because the loop, as I said before, has caused the larger institutions generally, the retail and banking and the various other institutions to concentrate within the narrow area, whereas otherwise they might have spread in a larger area.

Q. What I mean, Mr. Strauss, is some suggestion has been made here that there is a great deal of railroad property south of Van Buren Street that tended to keep values at Van Buren Street or north. Now, your suggestion is that the loop itself tended to keep values at Van Buren Street or north, is that right?

A. To a very large extent.

Q. Well, that extent was minimized then largely, was it not, by the fact that there was a great deal of railroad property south and west which would have the same tendency would it not?

A. No, there is considerable property which would have had increased value both southwest and north of the loop, without
423 reference to the railroads. Of course the railroads with their property would have probably stopped the growth of the business district. It would have spread in other directions, though.

Q. Immediately before this loop was constructed, where was the center of trade, or the center of values in the down town district?
A. Madison and State Streets.
Q. Which way was it drifting?
A. The center of trade or the center of values, or the highest values?
Q. Both or either, if they are not the same. Take State Street, for instance. Which way were the values running at that time, before the loop was constructed?
A. In all ways, in all directions.
Q. Well, where was the greatest growth of State Street at that time, in the late '80s or early '90s, north of Van Buren and State, or Madison and State, or south?
A. South.
Q. And at that time was or was not Van Buren Street a growing street, a fast growing street in values and in improvements?
A. Van Buren Street in what year?
Q. The early '90s, the late '80s and the early '90s?
A. I should not say so.
Q. What is that?
A. It was a growing street but not a fast growing street.
Q. You said that the loop tends to concentrate trade down
424 town, is that right?
A. Yes.
Q. And concentrate values down town, is that right?
A. Increased values. I did not say concentrated.
Q. Increased values and also concentrated?
A. Due to the process of concentration. I said that it has tended to increase values.
Q. Is there not a general tendency in all large cities to increase values, and the concentration of trade producing same, in certain centers?
A. No, no city in the world to the extent that it has in the City of Chicago.
Q. Do you refer to concentration or values?
A. I refer to values caused by this concentration.
Q. Do you mean to say that values down town in the City of Chicago are not equaled anywhere in any city in the world?
A. In certain spots.
Q. In what certain spot?
A. From Van Buren on State Street to Randolph and State Street.
Q. Do you say those values are not equaled anywhere in the world?
A. I say there is no place in all the world where for a given number of blocks and for the number of front feet with a depth of a hundred to 125 feet the same values will obtain in any city—in any
425 city that I know of.
Q. What have you done with reference to advising yourself as to that?
A. Oh, I studied conditions in London and Paris, Berlin and New York and other cities, actual knowledge of the situation.

Mr. Mecartney: Now, Mr. Strauss, you have stated that in your judgment this increase of this property in question was caused by the increased travel which the loop brought to it, or in that immediate neighborhood. You consider the whole loop has no other railroad in that estimate, do you, or just a portion of that?

A. I have considered the loop and the roads that run in and around the loop.

Q. Well, then, when you consider increased travel, do you take into consideration all of the passengers which the loop carries?

A. Necessarily.

Q. You do. Well, you do not take in consideration just the passengers which the loop carries who would not have come to the same neighborhood had it not been for the loop? You do not narrow your estimate to that, do you?

A. No, I believe there are a good many passengers would have come within the loop if the loop was not there.

Q. Have you tried to differentiate or distinguish between those and the amount actually carried?

426 A. No.

Q. Well, supposing the only estimate in this case which we are concerned with from you involves only in that respect the estimate of the added travel which the loop brought which would not have been there except for the loop. Can you make an estimate based on that basis?

A. I would not undertake to make that estimate. It would be a large percentage, though.

Q. Have you any means of knowing how many people came to the south side by means of elevated railroads immediately before the loop was constructed?

The Court: You mean elevated railroads.

Mr. Mecartney: I mean the construction and the then existing elevated railroad.

Mr. Walker: Yes.

A. I don't know the number of people, but quite a good many.

Mr. Mecartney:

Q. Have you ever made any attempt to estimate that number?

A. No.

Q. And have you ever made any attempt to estimate the number which the loop actually carried around and then find the difference?

A. Oh, probably the larger number which came there be-

427 fore it came there afterwards, or immediately afterwards, but all the properties outside of the loop immediately suffered by the loop going in. We have a concern that made a million dollars just before the loop went in and its profits shrank right down.

Q. I have no means of looking into the books of your concern and I am powerless to contradict that. I object to it and move that that be stricken out.

The Court: Yes, that part of it with reference to the million dollars may be stricken out.

Mr. Mecartney:

Q. What portion of the city do you think the construction of the loop benefitted in its market value?

A. It benefitted mostly that property from Van Buren to Lake Street and from Wabash to Fifth Avenue.

Q. Is there any portion of the city outside of the downtown district which the loop benefitted?

A. I should judge on account of the rapid transportation it afforded it might have benefitted some property out at Wilson Avenue.

Q. Well, wouldn't it generally, I say, benefit all the property on either side of the elevated road?

A. No. It will for business purposes down town, but not outside.

428 Q. Wouldn't the aggregate benefit from the down town loop be as great on the property outside of it as it was on the down town property?

A. No.

Q. The aggregate would not?

A. No.

Q. The parties who were induced to go down town by reason of the loop, you say there were a great many people?

A. They were forced to, most of them.

Q. On account of the loop?

A. On account of the loop.

Q. Well, they would be just as anxious to get back, wouldn't they?

A. Well, they do get back, but they are forced to go down because business, the larger business is concentrated within the loop now.

Q. Are you able to separate the benefits from the down town, throughout the entire town?

A. No, I know what the values were and how they have increased since the loop has gone into effect, and what conditions have arisen since the loop has gone into effect, and for which it was the leading cause.

Q. Can you separate the market effect, the total market effect of the loop on property in and around Chicago from that on the down town district, that is between the down town district and that of the outlying districts?

A. I think it has been very damaging to property within five or six blocks north, east, south and west—or south, west and north of it.

429 Q. The loop has been very damaging?

A. Yes.

Q. Then that is the best answer you can give to my question?

A. All I can say is that the property on Wabash Avenue three blocks south of the loop is not worth any more to-day than twenty years ago. Property north of the loop is not worth any more than it was 20 years ago.

Mr. Mecartney: Can you give me the aggregate total market increase of the down town district of Chicago from the aggregate total market increase produced by the loop throughout the city outside of that district? Can you estimate it in any way?

A. Oh, I should judge that the loop has benefited the property within its border—within its confines about—well, it is immeasurable as compared with the property immediately outside of it or within a reasonable radius from it.

Q. Will you tell me whether or not the particular loop structure and style of its construction and operation has any advantage in facilitating down town travel over what a subway would have had, for instance?

Mr. Walker: I object to it.

The Court: Objection sustained.

Mr. Mecartney: I will repeat the question with the sta-
430 tions, with underground stations placed just where the loop stations are placed.

Mr. Walker: I object to it.

The Court: I sustain the objection.

Mr. Mecartney: Exception.

The Court: I do not understand your question as meaning—are you going to take the elevated railroads out and put the subway in instead?

Mr. Mecartney: Oh, assume the effect, no matter if we have the elevated road. When a man professes to tell the influence of that particular style of structure upon the trade of a city going down town, established between four terminals, it is just as appropriate for me to ask him to give an estimate on anything which would accomplish the same thing, the same result, in order to test whether he can give any approximate estimate or not, as, of course, we contend he cannot in any case.

Mr. Walker: Who said it would accomplish the same results?

Mr. Mecartney: I am assuming it accomplishes the same results.

The Court: I sustain the objection.

Mr. Mecartney: Exception.

Q. Is the benefits that come from the establishment of the
431 loop instantaneous benefit or is it a growth, as affecting market values?

A. Well, it would be an instantaneous benefit.

Q. How is that?

A. It should be an instantaneous benefit with an increasing—with increasing benefit shown as the time goes on.

Q. Now, how much is your instantaneous benefits in this instance to this property, at the time and immediately after the loop was put in operation?

A. I believe I gave you my figures there.

Q. The instantaneous benefits?

A. From '96 to '97.

The Witness: I said on an average there was an increase of more than eight per cent. in ten years for the average of ten years, eight per cent. a year.

Q. Now, you say merely part of that percentage is due to the elevated road?

A. Yes.

Q. You have not, as you said, attempted, however, to estimate the difference between the travel that actually did go over it and the travel that would have come to the same place had it not been for the loop?

A. Well, that, I am only enabled to judge that by the prices which prevailed before and which prevailed since, and which now prevail.

Q. That is not my question. That is the only way I
432 am able to judge.

Q. Give me the estimate of increase in the market value of thi- property arising from the additional travel furnished to this point or neighborhood or property over what travel would have gone there had it not been for the loop?

A. This specific piece of property?

Q. Yes.

A. 33 1/3 per cent. immediately and 8 to 10 per cent. a year thereafter.

Q. Now, what is "immediately"?

A. '97 to '98.

Q. '97 to '98. And you are confining your answer to the particular number of passengers, or I mean to say the particular amount of travel over what would have occurred had it not been for the elevated loop, is that right?

A. I am confining myself to this particular piece of property before and after, and which was necessarily increased in value on account of the increase of travel and being made a terminal, between two terminals.

Q. Well, are you speaking now of increase in value or increase in value arising simply from the excess of loop travel over estimated travel from other sources?

A. In my estimate, this increase in value in 1897 and '98, I believe that it was mostly all caused by the increased travel over the loop. After that it might have been caused by the loop and other contributing causes.

433 Q. So that if the entire fee, building and buildings here running 133 feet from the corner of Clark west on Van Buren Street and 95 feet on Clark Street was worth approximately half a million dollars.

The Witness: $400,000 for the 95 x 108, and before it went into effect it was worth about $300,000 to $325,000.

Mr. Mecartney: And then the other.

A. As stated, $35,000 to $37,500, I believe, and $50,000 afterwards, independent of its connection with the corner.

Q. No, I am asking for a total of both properties, as if a man owned them both, buildings and land.

The Court: In 1897?

Mr. Mecartney: 1895.

A. It is the sum total of those figures, $362,500 for the ground itself, about $362,500 before, and it is about $450,000 afterwards.

Q. That is 132 feet of ground and both buildings?
A. No, that is the ground only.
Q. All right. Now, add both buildings, can you?
A. Oh, about 125 to 130,000 dollars.
Q. Well, that makes in the neighborhood of $500,000, so that your increase from this added traffic benefit, travel benefit
434 that the loop gave over what would have been there had it not been for the loop is 33 1/3 per cent., and that the instant benefit of $160,000, or something like that, is that your estimate?

The Witness: I didn't say the building was improved, and didn't say the building was damaged.
Q. $160,000?
A. $362,500—no, that is about $87,500 to $100,000.

WILLIAM N. EISENDRATH, called as a witness in behalf of the defendants, having been first duly sworn, was examined in chief by Mr. Walker, and testified as follows:
Q. Your property is the southeast corner of Plymouth Peck and Van Buren Street, is it not?
A. The northeast.
Q. What are the dimensions?
A. 50 feet on Van Buren Street and 80 on Plymouth Place.
Q. You acquired it in 1903, the leasehold interest, did you not?
A. Yes, sir, and then the fee in addition thereto in 1905.
Q. The railroad is in front of your property on Van Buren Street, isn't it, Mr. Eisendrath?
A. Yes.
Q. With a station at State Street?
A. Yes.
Q. On Van Buren?
A. Yes.

Mr. Walker:

Q. What was the purchase price of the lease, Mr. Eisendrath?
435 A. $65,000.
Q. And did you buy the fee subsequently, so as to get all the interest?
A. Yes, sir.
Q. When?
A. Well, it was completed, the purchase of the fee was completed on March 2nd, 1905.
Q. What was the price?

Mr. Mecartney: Objected to. Now, that is eight years, practically eight years after the Loop was put in operation.
The Court: He may answer.
Mr. Mecartney: Exception.

Q. What was the price?
A. $165,500.

Cross-examination.

By Mr. Mecartney:

Q. You bought the lease about 20 years after it was made, 29 years, or nearly 30 years?
A. 21 years after it was made.

ALBERT L. STRAUSS, resumed the stand for further cross examination by Mr. Mecartney, and testified as follows:

Q. Now, did you ever hear of the Swift Commission, valuation commission?
A. Yes.
Q. Well, I will state as a basis that Joseph Donnesberger, Eugene H. Fishburne and Dunlap Smith—you remember those three real estate men?
436 A. Yes, sir.
Q. Mr. Strauss, if that Commission, in the due course of their work put a value on the very property which you valued at $500,000 put a value of $786,000 and a fraction on, would that modify your judgment now of its then value?

Mr. Walker: Objected to.
The Court: Read the question.
(Question read).
Mr. Mecartney: That is proper.
Mr. Walker: I think it is not.
The Court: I think the idea about a commission, these people may have their idea of the value of the property. I will sustain the objection.

Mr. Mecartney: Exception.

Mr. Mecartney:

Q. You have given, Mr. Strauss, a valuation upon this property, a total value of about $500,000 in 1895. Do you remember whether at that time this property had a street car track on it, or whether there was a street car track on Clark Street passing the property?
A. Yes, sir.
Q. And whether there was one on Van Buren Street, running past it?
A. Yes, sir.
Q. Was there a street car on Dearborn Street, a street car track on Dearborn Street, north and south, running to the Polk Street depot?
A. I think there was.
437 Q. Was there a street car on Fifth Avenue, running north and south on Fifth Avenue?
A. I think so.
Q. Was there a street car on Clark Street—were the Wentworth Avenue cars running on Clark Street at that time?
A. I don't recall.
Q. Was there at that time the terminal of the Lake Shore depot almost opposite of this property, a little to the west.

A. It was at the same place it now is.

Q. Yes. Now, will you tell us or estimate for us, if you will what part of the $500,000 of market value, existing as of that time, according to your estimates, was attributed by the fact of the existence of the Clark Street line?

A. What part of its value?

Q. Yes.

A. Well, I could not estimate that. I was simply figuring on its market value as of that time.

Q. Estimate what part of that market value was contributed by the Van Buren Street line?

A. Some portion of it was contributed by both lines on account of the larger influx of people caused by that.

Q. Well, estimate the proportion?

A. Impossible.

Q. Impossible for you?

A. Well, it is impossible for any one.

Q. But it is possible for you in 1905, to estimate exactly how much of market value was contributed by this Loop road?

A. No, sir, I don't say so.

438 Q. Well, you estimated the amount of increase each year from the Loop road alone, didn't you?

A. No, sir.

Q. Oh, you did not?

A. I did not.

Q. Are you sure of that?

A. Not from the Loop alone, no, sir.

Q. Then what was it?

A. I said in my judgment the larger part, on account of the number of people that are put in there.

Q. Well, the larger parts of the increased market value was contributed by the Loop alone, wasn't it?

A. The larger what?

Q. The larger part of the increased market value?——

A. As of 1897?

Mr. Walker: Yes.

Mr. Mecartney: And of 1894 and 1895?

The Witness: No, I say before the Loop went in in 1895, and after the Loop went in in 1897, possibly from 80 to 90 per cent of that increase, of that immediate increase was caused by the Loop coming in.

Mr. Mecartney:——

Q. Do you recall that you said before 80 to 90 per cent., is that your best recollection?

A. I am not recalling what I said, that is as to 1897——

Q. You are not trying——

A. The immediate increase in market value was due to the

439 Loop coming in there. Subsequent to that a large portion of it was due to the Loop and the balance of it due to the increase in the town.

Q. The increase of population?
A. The increase of population.
Q. None of it was due to business conditions being better?
A. They were bettered on account of the Loop, largely bettered on account of the Loop.
Q. Now, is there any particular value that this property got during those years that you attribute to anything but the Loop?
A. To the larger number of people that were put in there by the various means of transportation.
Q. Well, the Loop did not produce the people in the first instance, did it?
A. No, but it brought them to the point there and it improved the property within and created these various enterprises and allowed the development of that.
Q. Can the Loop create any enterprise, Mr. Witness?
A. No, but it develops it.
Q. Develops the enterprise?
A. Yes.
Q. Does it develop it alone or in connection with enterprise itself?
A. Why, it connects it with enterprise itself.
440 Q. Is that all the value this brought to this down town district and this property in particular from the Loop, is not brought by that alone, but in connection and working with other elements, is that the fact, yes or no?
A. Yes—pardon me, let me have that question again.
(Question read).
The Witness: The other elements contributed also.

Mr. Mecartney:

Q. Will you answer it yes or no. Does it work with the other elements or do the other elements, each element add to it, like piling separate blocks in a block house, for instance?
A. I don't just follow how I am to answer that. There are other causes besides the Loop.
Q. Does each case work by itself, like one man in a factory producing something and another man in another corner of the factory producing something else?
A. It all becomes a part and parcel of the whole.
Q. A railroad in two open points in a prarie, does not of itself create enterprise, does it yes or no?
A. No.
Q. Does it, of itself, create business or bring business of itself?
A. It develops business.
Q. It tends to develop business, isn't that a better way of putting it?
A. I think it is just a contributing factor towards its development.
441 Mr. Strauss: I think it is a contributing factor towards development, the railroad in an open prarie.
Mr. Mecartney: How do you measure, in the fusion of elements, how do you measure one element?

A. I don't undertake to measure one.

Q. Then those elements working together result merely in a compound effect on market values, don't they?

A. I should judge so.

Q. You have attempted here, of course, to separate one of those elements from the compound, have you not?

A. I have not.

Q. When you say the greater part, and when you talked about 80 or 90 per cent., didn't you attempt to separate it, yes, or no?

The Court: He may answer.

Mr. Mecartney: Yes or no, is that not an attempt on your part to separate that element from the rest?

A. Well, that was done at your request. You asked me to try and separate it and that was my judgment.

Mr. Mecartney: I object to it and move to strike it out.

Q. Can you answer that question yes or no?

A. Not without qualifying it.

Mr. Mecartney: Then I will withdraw it.

Q. Look at the structure in front of the hotel property here showing you Plaintiff's Exhibit 1, would you say that structure in
442 and of itself is a damage or a benefit to the market value as was in 1897, when it was completed and put in operation, was it a damage or a benefit to the market value of the McCoy property?

A. On the picture it looks like damage. In reality it is a benefit.

Q. In what respect does the picture differ from the reality?

A. The life and bustle which exists there does not manifest itself on the picture.

Q. Excluding from your consideration, the life and bustle for the purposes of the estimate, and tell us whether that structure of itself was or was not a benefit to that property in 1897 or 1898 when it was completed?

A. The structure independent of the trains?

Q. All right.

A. I should judge that the structure would damage the property if there was no operation of trains on it.

Q. How much of a damage would you say in percentage?

A. I wouldn't undertake to estimate.

Q. Would it damage it 20 per cent?

A. I shouldn't undertake to estimate it.

Q. Would it damage it 15 per cent?

A. Why it would be a useless proposition. It would be like a corpse. It would have no use.

443 Q. Being a corpse and being a useless proposition, can you make any estimate?

A. A corpse is worth nothing.

Q. Was that corpse worth nothing then as a damage or a benefit?

A. I don't think that it benefitted the property. To what extent it damaged it, it is impossible for me to estimate it.

Q. Do you think it is more impossible for a real estate man to es-

timate that damage, than it is to estimate the immediate market effect from the single element of immediate travel benefit?

A. Yes, sir.

Q. Does the Ordinance—does an ordinance or a state law limiting the height of buildings in the down town district have any effect on down town values?

A. It would have an effect, yes, sir.

Q. What effect would it have?

A. Do you mean now or at that time?

Q. Well, at that time or any time, what would it have?

Mr. Walker: Read the question?

(Question read).

Mr. Walker: I object to it as immaterial—No, I will withdraw it and let him answer it.

The Witness: That depends entirely on what uses the property can best be put.

Mr. Mecartney: Well, take the down town district as a whole,
444 would that tend to limit or extend values and spread out the territory in the down town district?

A. If you take it is a whole it would tend to limit and allow the spreading out of territory, making a more uniformity of values.

Q. Do you remember 1895—how many different companies operated street cars on the surface down town?

A. How many?

Q. Yes.

A. The West Chicago, the North Chicago, and the Chicago City Railway Company, that is my recollection.

Q. And the City Passenger Railway on Adams Street, or wasn't it somewhere down there?

A. Why, that was the part and parcel at that time of the West Chicago Street Railroad, I think.

Q. Would the unification of those properties and the simplicity of travel and interchange of travel between those different systems down town tend to increase or decrease, in your judgment, the travel down town, in your judgment?

A. The unification?

Q. Yes, together with the interchange of traffic arrangement, for interchange of traffic.

Mr. Walker: I object.

The Witness: One city, one fare.

445 Mr. Mecartney: Yes.

Mr. Walker: I object to that.

Mr. Mecartney: Yes, take that as a basis.

Q. Would that have any effect on increasing or decreasing the travel in the down town district.

A. One city, one fare, at that time might have had some effect on it.

JAMES P. WHEDON, called as a witness on behalf of the defendants, having been first duly sworn, was examined in chief by Mr. Walker and testified as follows:

Q. What is your present business, Mr. Whedon?
A. I am vice president and Treasurer of the American Bankers Insurance Company.

Mr. Walker:

Q. How long have you been connected with that institution?
A. About four years.
Q. What was your business prior to that time?
A. I was in the real estate business.
Q. How long all together in the City of Chicago, have you been in the real estate business?
A. Since 1888.

Q. Now, from 1906 to 1910, before you became the Vice
446 president of this insurance company, what was your business?
A. Do you mean since that time?
Q. Yes.
A. Before I started in the Insurance business?
Q. Yes.
A. I was in the general real estate business, and was doing expert real estate work for the city of Chicago in special assessment cases and I was also employed by the State of Illinois in making valuations of estate in inheritance tax cases.
Q. And that involved an investigation of the down town values?
A. Yes, sir.
Q. How long, Mr. Whedon, if at all, have you been familiar with the values of the down town district?
A. Ever since 1888, specifically.
Q. Did you acquaint yourself with the values at any time before that time, so as to know what they were in 1882, 1883 and 1884?
A. Yes, in a general way.
Q. Do you know what the going rate of interest was on such long term lease where they were made, where they were capitalized in the early eighties, '82 and '83 and along in there?
A. Not from personal experience.
Q. Well, from education?

A. Only from reading and information that I had gathered
447 from other people. I think in that way I am.
Q. What was that going rate?
A. I thing as a general proposition it was five and a half to six per cent.
Q. Now, at that time when the elevated railroad was built and put in operation, were there any trolley cars or trolley wire cars in the down town districts?
A. No, sir.
Q. What was the means of transit, of power, of the cars in the down district?
A. They had the old cable system, where the cable ran in the

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streets and the grip from the car would grip this cable which was running all the time and carried them in that way.

Q. There was a cable on what streets, do you remember?

A. I don't remember them, but I know there was one on State Street.

Q. Wabash Avenue?

A. And one on the north side, State Street, and Wabash Avenue.

Q. And Madison on the west side?

A. And Madison on the west side.

Q. What were the other cross town street, what was their power, where there was not any cables?

A. Horses.

Q. The horse car as a conveyance, how was it as to size, carrying capacity, compared with the modern car to-day, where the overhead trolley is run?

448 A. Well, I should think you would get at least twice as many people in the overhead trolley cars as you get in the old fashioned horse cars.

Q. Mr. Whedon, are you familiar with the McCoy property, the McCoy leasehold and the fee interest, at the northwest corner of Van Buren and Clark Street?

A. Yes, sir.

Q. How long have you known that property?

A. Ever since I have been in Chicago.

Q. You have known of the corner ever since 1867?

A. Yes, sir, I have known of that corner but the——

Q. Now, Mr. Whedon, take the 25 feet, which is the east 25 feet of lots 20 and 23 that face La Salle Street, the owner of the fee of which was Mr. McCoy, and the building, in 1895. Assume that that property was in an independent owner, without any right to use the corner, without any right of the use of the corner of either La Salle or Clark Street, what in your opinion, was that ground worth per front foot in that shape at that time?

A. In 1895?

Q. Yes, the 25 feet, assuming that it is an independent owner?

A. Yes, about $2,000 a foot.

Q. What would you say it was worth, assuming that it could be used in connection with the 99 year lease on the property, on the corner, that same 25 feet in 1895?

449 A. I say it was worth 33⅓ per cent. more, added to the corner.

Q. Well, you gave two thousand. Now, about how much would you make that?

A. About $2,800.

Q. What?

A. About $2,666.

Q. Take the corner leasehold and fee, as one entity, as though it was in one owner, both the lease and the fee, 95 feet on Clark Street by 106 feet on Van Buren Street. What, in your opinion was that worth in 1895?

A. I think that was worth $3,000 a foot.

ND CLOSE IN CENTER

Q. On which street?
A. On Van Buren Street.
Q. $3,000 a foot on Van Buren?
A. Yes, sir.
Q. And what do you think it was worth—which was the more valuable at any time, the Clark Street or the——
A. The Clark Street was the most valuable frontage.
Q. Yes. How much would you place on the Clark Street frontage?
A. I think it would be worth at least $4,000 or $4,250.
Q. Yes. Now, Mr. Whedon, what value would you put upon the building, on the 25 feet, if you think you are able to estimate it, as part of that ground in 1895?
A. Well, I think the building was——
Q. That is on the 25 feet?
A. That is one the 25 feet.
450 Q. Yes.
A. Oh, I should judge that building to be worth about $40,000.
Q. In 1895, in your opinion, was that building—assuming that the lot was in connection with the corner, was that an adequate building?
A. In connection with the corner and a part of the hotel, yes, at that time.
Q. All right. Now, take the building, the hotel building, have you ever been in the hotel?
A. Yes, sir.
Q. And you know its character?
A. Yes, sir.
Q. What sort of construction do you call it?
A. Well, it is what we call the old fashioned brick construction.
Q. Now, bearing in mind that, if it would add any value to the ground on the figures you gave, what was the value of that building?
A. I think that building was worth about a hundred and twenty-five thousand dollars at that time.
Q. Do you think it was adequate?
A. For that time, yes.
Q. You gave the value of the ground and buildings on both pieces, as a fee owner. Now, in 1895, there was 87 years to run in McCoy's lease. The rent was $8,000 a year. You know that, don't you, Mr. Whedon?
A. Yes, sir.
Q. What was the fee, subject to that 89 years—that 87
451 year lease still to run, worth, on that property, what percentage would you capitalize the income to get at that in 1895 as distinguished from the——
A. I would make that on a five per cent. basis or a hundred and sixty thousand additional, as the value of the fee at that time in 1895.
Q. Please give me your total figure. You gave me the front foot

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figure on the value of the lease—on the real estate—whichever way you figured it, either on the $108,000 or the $3,000 at the Clark Street. I suppose he is entitled to the 4,000 a foot, the Clark Street frontage, that is the largest. What would that make that total figure.

The Witness: $4,250 a foot on Clark Street for the 95 feet if I have figured it correctly, would make $407,750 for the land.

Q. What, in your opinion, was McCoy's interest in the land, his leasehold?

A. $247,750.

Q. How much?

A. $247,750, taking out the $160,000 that was——

Q. All right. Then the building added to that would give your opinion of what McCoy's interest was?

A. $372,750.

The Court: $572,750?

The Witness: Yes.

452 Mr. Burns: What?

The Court: $572,750 including the building.

Mr. Walker: No, he is giving the price for the land. You see he subtracts the $160,000 for the fee, and then takes the building——

The Court: That is a total valuation, the total valuation is $572,750 including the fee.

Mr. Mecartney: That figure of $572,000, I may say, in the interest of accuracy, is $532,000, as I make it. The result is the same, however.

Q. Yes. Now, what figure would you put upon the property based on the Clark Street frontage at that same time, to a depth of 133 feet as distinguished from a depth of 108 feet after the road was put in operation?

A. I think that property was worth from $5,500 to $6,000 a foot on Clark Street in 1897 and 1898.

Q. Now, will you please tell us, on the Clark Street piece, assuming that the 133 and 25 feet has been added to the property, what the total ground was worth on the Clark Street front piece. You say somewhere between $5,000 and $6,000 on Clark Street. Please give the nearest figure that you would say——

A. $5,500.

Q. All right. Now, give me the total piece on the Clark

453 Street frontage?

A. $522,500.

Q. Would you, in your opinion, take that date when the railroad was in operation, would you think that the building was then up to date or adequate or not, in 1897?

A. The buildings were not up to date but I think they were adequate to the conditions at that time.

Q. What do you think from 1902 to 1905, whether those buildings were then the proper sort of improvements, and state whether they were for that period, on that ground?

ND CLOSE IN CENTER

Mr. Mecartney: Objected to as incompetent, irrelevant and immaterial.

The Court: He may answer.

Mr. Mecartney: Exception.

The Witness: I think the property could have been improved, to my judgment, to better advantage than it was at that time.

Q. Would you capitalize at any different percentage in 1897 and 1898 for the purpose of getting the value of the fee interest with a lease to run 85 years?

A. No, I don't think I would.

Q. You would still capitalize at five per cent., would you?

A. In 1897 and 1898, yes, sir.

Q. You would?

A. Yes, sir.

Q. Then that would make the fee ownership, in your
454 opinion, $160,000?

A. Yes, sir, at that time.

Q. Well, now, take your education in that direction and state whether or not you have had occasion to investigate the effect of this Loop on properties around which it runs as well as properties within, and just without it?

A. Yes, sir, I have.

Q. Have you an opinion as to what its effect was upon the abutting real estate upon the street over which the railroad runs?

A. Yes, sir.

Q. What, in your opinion, was the effect of the construction and operation of this elevated railroad upon the interests of Mr. McCoy in the property that we are discussing here?

The Court: In 1897?

The Court: You have a right to go up to 1905, in the opinion of the Court. Now, anything beyond that the Court has limited you, and therefore, the objection will be sustained unless it is limited from the period of 1897, up to 1905.

Mr. Walker: All right.

Mr. Burns: Exception.

Mr. Walker:

Q. Mr. Whedon, with the Court's limitation, what, in your opinion, was the effect of the construction and operation of this
455 elevated railroad on the market value of Mr. McCoy's interest in that property from November, 1897, to the early part of 1898, first?

—. The property was benefitted.

Q. What do you mean by benefitted?

A. The market value——

Q. It had an effect on its market value?

A. The market value was increased, yes.

Q. What would you say as to the effect of this railroad upon the market value of the property in question, Mr. McCoy's interest

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herein, up to from the period just given in the first part of the question, 1898 up to say the 1st of May, 1905?

Mr. Mecartney: That I object to.

The Court: Objection overruled.

Mr. Mecartney: Why, your Honor, the scope of the case is the immediate instant effect. There is no continuing thing like a continuing claim here, running through from year to year.

Mr. Mecartney: No, your Honor. Present, past and future is misleading. It only means this, that the party who owns the property—the whole thing is the assessment or estimate of the immediate market effect.

The Court: All right.

Mr. Mecartney: Now, to go along and ask what a continuing effect has upon the operation of it, in subsequent years, is beyond the scope of this case.

456

The Court: I don't know that we have gone that far, in that way.

Mr. Mecartney: We have not gone that far before.

The Court: That is the idea, I think that is true, Mr. Walker.

Mr. Walker: I am asking what the effect is of the construction of the—in this witness' opinion, of the construction and operation of this railroad within the period of time limited by the court.

The Court: Well, as to whether——

Mr. Walker: Well, I am not going to be insistent on it, if the Court thinks this is a new thing that has not been——

The Court: I don't think we have just followed along those lines. I think we followed along the lines of——

Mr. Walker: Well, I will get at it in another way.

Q. At any time since 1897 and 1898 and the figures you have given as the value of that date, has this property been worth less than the figure you gave as the value in 1897 and 1898?

Mr. Mecartney: I object to the question.

Mr. Walker: Up to 1905.

Mr. Mecartney: I object to the question as incompetent, irrelevant and immaterial.

457

The Court: Objection overruled.

The Witness: No, sir.

Mr. Mecartney: Exception.

Mr. Walker:

Q. At any time, in your opinion, Mr. Whedon, since the construction and operation of the elevated railroad in Van Buren street up to 1905, has it been worth any less than it was in 1895?

Mr. Mecartney: Objected to on the same grounds.

The Court: Well, he may answer.

Mr. Mecartney: Exception.

The Witness: No, sir.

ND CLOSE IN CENTER

Mr. Walker:

Q. What has been the percentage, if any, of increase or decrease, if any, from 1897 up to 1905, in your opinion——

Mr. Mecartney: Objected to.

Mr. Walker:

Q. —in the value of this property?

The Court: He may answer.

Mr. Mecartney: Exception.

A. I have given the figures of what it was worth in 1897 and 1898, and also what it was worth in 1905.

Mr. Walker: Now, Mr. Whedon, have you made your computation?

A. Yes, sir, as near as I can figure it, it comes to six per cent.

458 Q. That is six per cent. a year, annually?

A. Yes, sir.

Q. Now, what proportion of the increase, if any, do you attribute to the construction, maintenance and operation of this defendant railroad in Van Buren, this Loop, taking in the railroads?

A. Fully half, if not more.

Q. Now, Mr. Whedon, upon what do you base your opinion, give me everything that you took into consideration, that the increase from 1895 up till 1905 was a continual increase, half of the percentage of which in your opinion was due to the road? Upon what do you base that opinion?

A. I base my opinion upon the fact that the elevated railroad brought to those various stations adjacent to this property a great many people that were not there before. I also base my opinion for the continuation of the effect from the fact that the elevated railroads ran out into the outlying districts, and have continued to run out there, and that the people, the incoming population have to a very large extent settled along the line of the roads, and therefore these roads have continually brought those people here.

Q. Well, what if anything did your own dealings have to do with the formation of your opinion? Did you consider them at all?

459 A. I judge very largely from that, from observation, also from experience.

Q. All right. Now, will you tell me what in your opinion would be the best use, or would have been in 1896, when the railroad came along, of the second and third floors, of McCoy's Hotel, if they had been remodeled to get the highest price, with the railroad in front in the street?

Mr. Mecartney: That I will let him answer. I do not object.

A. Well, I doubt very much in that building, being conducted as a hotel, except for advertising the hotel itself, that you could mix business and the hotel together. I could hardly figure it on that

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basis. If the building was remodeled and fixed over for business purposes it would be a different proposition.

Mr. Walker: Are you still of the opinion they could not make a change in the second floors of this hotel making it a mercantile floor, and still operate a hotel of the same class?

A. Oh, they could do it; they could do it.

Cross-examination.

By Mr. Mecartney:

Q. Mr. Whedon, you have spoken about downtown facilities for travel just prior to this loop. Was the trolley, the overhead
460 trolley in existence in Chicago at that time as a means of street transit?

Mr. Walker: Down town, you mean?

Mr. Mecartney: I didn't ask you down town. I said streets of Chicago, anywhere.

A. Not in the down town district of Chicago.

Q. Well, as a matter of fact that was a well—had been for years a well established means of public travel in this city and other cities?

A. I don't think for years.

Q. Hadn't it been for ten years before, weren't there trolleys at least ten years before that?

Mr. Walker: In Chicago?

Mr. Mecartney: No, anywhere, all over the country.

A. Yes, for ten years. When you said "for years," I thought you meant longer than ten years.

Q. Now for some years trolleys were kept off the down town districts for the reason of danger of the wires to fireman in case of fire, isn't that a fact?

A. I think that was one of the reasons.

Q. You spoke of means of bringing people down to the city from outlying districts as one of the means by which the loop increased values. Was it possible for people to use the down town districts from the elevated railroads then established, prior to the
461 loop, without having this loop terminal, was it possible for them to use them?

A. To use the elevated railroads?

Q. Yes.

A. Well, they used it to terminals on the south side. They used it to a terminal at Congress street for a while.

Q. Well, the Metropolitan was established before the loop was established, the Metropolitan terminal on Franklin, was it not?

A. Yes.

Q. And the Lake street had a terminal at Market?

A. Yes, sir.

Q. Did you ever try to figure in your estimate benefits coming from this loop, as to just how many people were kept from doing business on the south side, without the loop being there?

ND CLOSE IN CENTER

A. I do not think that would be possible.

Q. So you didn't attempt it?

A. I don't think there is anybody could attempt it.

Q. And yet your estimate is based largely on the fact that the loop brought people down town who would not have come there had it not been for the loop, isn't that the fact?

A. I don't say but what people would have struggled some way to get down here.

Mr. Mecartney: Would you think it more difficult—did you attempt to make any estimate during these ten years which
462 you have given a percentage of increase, about a ten year period, from 1895 to 1905, did you attempt to make any estimate of the increase in travel in the down town districts brought by all of the steam roads, caused by all of the steam railroads centering within walking distance, whose terminals were within walking distance of the down town district?

A. No, sir.

Q. Did you attempt to make any estimate of the increase in down town travel during that period that came from increased facilities of surface lines? Did you attempt to make any such estimates?

A. No, I did not.

Q. Did you attempt to make any estimate of how many more *more* people walked into the down town district from year to year during those times, that is, post-loop period, as contrasted with the ante-loop period?

A. No, sir.

Q. You didn't try that?

A. No, sir.

Q. You made no estimates on that influx or increase of down town travel by means of various conveyances then known or in use, did you?

A. No, sir.

Q. Did you make your estimate of increased travel in the down town district from the elevated loop upon the basis that had that loop
463 not been constructed, that there would have been no other means of down town travel or interchange of travel on the South Side, or not?

A. I did not take that into consideration. I took the facts that existed.

Q. Now, what elements, in your judgment, do affect the value of real estate in a district like Chicago, or down town district in particular, as to decreasing or increasing the market value?

A. The great element in my judgment is the bringing of people to localities where—the people make the business.

Q. Now, what other elements that are not chief are there in your judgment?

A. Well, in most of the large cities people gather together in business districts. In Chicago particularly, it is banded together by the loop, which makes it necessary for them to get here.

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Q. Well, then, people will band together with or without a loop, won't they?

A. Well, there is always something that gets them together, somethings more important than others. I think this is one of the most important that I know of.

Q. Now, conceding that for the purposes of your cross examination, that you think it is one of the most important, mention the other elements that will make people band together.

A. Well, business houses are erected and the people natu-
464 rally go to large stores and things of that kind.

Q. Then business affects the market value, does it not?

A. To a certain extent.

Q. The character of business in a certain locality affects the market values?

A. Yes.

Q. And if there be an increase of that business in the locality it tends to increase the market value, is that not right?

A. Yes, but the business doesn't start without the transportation.

Q. The business doesn't start without the transportation?

A. Oh, in a small way, but it increases from the transportation that brings the people.

Q. Yes, resolving this thing into its last analysis, would you say business needs transportation, and has a right to it, or would you say transportation of itself produces business?

A. They fit together.

Q. Does the state of the time, whether good financial times or bad financial times, have anything to do with the increase or decrease of market value? The question is whether or not they have anything to do with it?

A. I think it does. There are times when the rentals are affected by hard times.

485 Q. Didn't down town property as a rule continue to increase from 1897 say up to 1905, the period covered by your examination?

A. I think downtown property in Chicago has increased continuously.

Q. Well, it is easier then for you to give, take into consideration these general market elements, of better times and population and traffic facilities, covering a number of years, and put it right down in connection with traffic on one piece of property, than it is for you to give an estimate of the general advance, is it?

A. I think it is. In specific cases, from my observation, the travel and business conditions——

Q. But you have to apply the general market conditions to that specific case, do you not?

A. I know from my own experience. I am judging very largely from my own experience with loop properties.

Q. What elements did you take into consideration in considering this advance of six per cent. a year on this property from 1895 to 1908?

A. I took the question of transportation as the main element.

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Q. What other elements did you take which were not main elements?

A. Then there was business interests, the increase of street car travel, the increase of automobile travel, that might be a very little of it, and other things of that kind.

466 Q. Well, you have taken the total effect of all these things and then selected out one element, that of loop travel, how you not?

A. I think that is the main element.

Q. Well, if it is the main element why can't you put an estimate on these other elements?

A. I do not think you can divide them in such a way. This is very observable, this elevated loop itself, and the people coming there increasing every year the number of passengers.

Q. And with all that experience of yours, you still don't think of this structure yet, do you, the elevated structure in the street, as an element by which you are going to test how that market value is——

A. I have seen the elevated structure ever since it has been put up.

Q. I say you still have not thought of that yet as an element?

A. Yes, I have, I thought of that, too.

Q. Why didn't you mention it?

Mr. Walker: He gave the total effect.

Mr. Mecartney: The total effect, but I have asked for the element, and you didn't mention that as an element, and you remember the other three witnesses did not mention that as an element.

Q. Yes, I took it into consideration in connection with
467 the advance, yes.

Mr. Mecartney: Now, Mr. Whedon, do you consider that structure by itself an element of benefit or damage to that property?

A. You mean without trains and passengers?

Q. Consider it without trains, yes.

A. Why, I think it would be a damage if it were left there, but I cannot conceive the city of Chicago——

Q. I did not ask you for the situation yet. Now with out trains being on it, as a kind of silent structure, permanently occupying, it would be a damage, would it, or would it be a benefit?

A. It would depend entirely upon what they would do with it.

Q. Well, if they did nothing with it, a permanent structure, as silent as a stone wall, to be used there for the purposes of carrying conduits or power or city water or something like that, with no noise or anything, would it be a benefit or damage in that illustration?

A. Well, I think it would be a damage under those conditions.

Q. Well, all right. Now how much of a damage would you say, how much percentage of damage would that be?

A. Oh, I could not make any estimate on that, because I could not conceive, as I said before, of its being there.

468 Q. Can you conceive of the illustration, or can't you?

A. I would not like to make an estimate of the damage.

Q. Would you say it would be twenty per cent. of the value of the property?

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A. I would not want to make an estimate at all under those conditions.

Q. Make a guess at it. Would you guess it would be fifteen per cent.?

A. I would not even do that.

Q. Would you consider the element of noise, if the structure was operated, would it add to that damage, or would it detract from it? That is to say, would the element of noise from the operation of trains benefit the property? Would it be a beneficial element, or a detrimental element?

A. It would depend entirely on whether it landed passengers there.

Q. I am not talking about passengers. I am talking about noise.

A. I do not think noise would add anything to the property. I think it would be more or less disadvantage, just by itself.

Q. That is what I asked you, just by itself. You have spoken of the downtown loop, as being a benefit to the property, by reason of bringing people from the outlying districts into Chicago. Do you know the Aurora, Elgin & Geneva Railroad?

A. Yes, sir.

Q. Where is its downtown terminal in Chicago?

A. Fifth avenue between Jackson and Van Buren street.

Q. Do you know any commercial houses on La Salle street for merchandizing, between Clark and Fifth avenue?

A. On La Salle between——

Q. No, I mean on Van Buren between Clark and Fifth avenue.

A. Any commercial houses?

Q. Yes. Like, I mean to say, large stores that use the second stories or third or fourth stories in connection with the first?

A. Well, there is a large wholesale tailoring establishment there.

Q. Whereabouts?

A. On the corner of—between La Salle and Fifth avenue you say?

Q. No, between Clark and Fifth avenue?

A. No, there is nothing between Clark and Fifth avenue that I know of.

Q. There aren't any?

A. Not that I know of. There are second story—the buildings in there are small.

Q. Prior to 1905, within the period about which you have testified, which was the more valuable property, State street or Wabash?

A. State street.

Q. You have spoken of some advance in down town property from 1897 to 1905. Were those advances in value any greater than they were in many other places, in your judgment, during the same time?

A. You mean in the—I did not quite catch the question.

Q. I will put it another way. There are a great many places in the city where values increased from 1897 to 1905 that did not have elevated road connection, was there not, transit facilities?

A. I do not know of any—I do not recall any now where they had as great an increase as they had in the down town district.

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Q. There has been for two or three years in the district from 18th street to 31st street, and on State, Indiana and Wabash, and so on, there was a vast increase in values there, was there not, in from one to three years ago, between one and three years ago?

A. The automobile industry made Michigan avenue.

Q. I am going to give you a chance to say that later. But was there a great advance in values there?

A. Yes, there was a considerable advance in value along Michigan avenue.

471 Mr. Mecartney: You say that the construction of an elevated railroad along property increases its market value do you not?

A. It depends entirely upon the close proximity of the station, so that the people can reach the property conveniently.

Q. Well, as an average rule it increases the value of property, and increases trade, don't it?

A. It might.

Q. Would you say the building up of private property along the elevated road increases the value of the elevated road to its stockholders.

Mr. Walker: Wait a minute. Objection.

The Court: Sustained.

Mr. Mecartney: Exception, that is all.

Redirect examination.

By Mr. Walker:

Q. Mr. Whedon, were you familiar with the territory between 39th street, Indiana, Prairie and Calumet up to 63rd street before the elevated railroad went in, between Calumet and 63rd?

472 Mr. Mecartney: I object to that.

The Court: He may answer.

Mr. Mecartney: I object to that. Not redirect.

A. Yes, sir.

Mr. Mecartney: Exception.

Mr. Walker: Was there four-fifths of that whole territory improved before the elevated went in?

Mr. Mecartney: Objected to as irrelevant, incompetent and immaterial and not redirect.

The Court: He may answer.

Mr. Mecartney: Exception.

A. I do not—I think there was at least four-fifths of it that was vacant and unimproved.

Bertram M. Winston, called as a witness on behalf of the defendants, having been first duly sworn, was examined in chief by Mr. Walker, and testified as follows:

Q. What is your business, Mr. Winston?

A. Real estate.

Q. And how long have you been interested in the real estate business?

A. For 24 years.

Q. Now, are you acquainted with the McCoy Hotel property and the property next west, McCoy's east 25 feet of lots 20 and 23, those lots that face La Salle, where the Greenebaum's have built?

473 A. Yes, sir, I am.

Q. How long have you known those properties?

A. Possibly for twenty years, probably twenty years.

Q. Now, the Rialto occupies the south half of the block?

A. The south half of the block between Jackson Boulevard and Van Buren, Sherman Place and La Salle street.

Q. And the north half of that same block is occupied by the Board of Trade Building?

A. By the Board of Trade Building.

Q. Now, are you familiar with the income, as a stockholder and one of the company, that owned that building, before the elevated railroad loop was constructed in Van Buren street?

A. As a stockholder I have the annual reports and discussed the matter with various officers from time to time.

Q. Now, Mr. Winston, were you familiar with the values of property in and along on Van Buren street in this neighborhood and generally within the loop prior to the construction of the elevated loop railroad?

A. I believe I am.

Q. Were you familiar with the values of property in that same locality, after the construction of the loop and the operation of the railroad?

A. Yes, sir, I made it my business to follow the valuation.

Q. Have you represented other properties within the loop

474 besides this that you personally or your family is personally interested in?

A. Yes, sir, I have been interested in sales and been interested in the management of different properties.

Q. Now, Mr. Winston, take this property in question in this case. Go back to 1895. I will take that date as being the date before the road was in the street or any of the structure.

A. I don't remember the date.

Q. At that time, Mr. McCoy owned in fee the east 25 feet on Van Buren of the lots that fronted on La Salle, lots 20 and 23, 25 feet by 96 77/100 feet with an eight story building on it. You know the building that is on the ground now?

A. Yes, sir.

Q. What would you say in 1895 that that property was worth per front foot on Van Buren street, the real estate, independent of the building as a distinct piece from any connection with La Salle or Clark street, as a piece of real estate in 1895, before the road came there?

A. My opinion is that that was worth $2,000 per front foot.

Q. As an independent piece?

A. As an independent piece.

Q. Now assuming that it was in connection with the corner at that time, what figure would you put on it a front foot,
475 assuming it could be used on the Clark street front in connection with a 99 year lease on the Clark street front?

A. I would say $2,500 or $2,600 a front foot.

Q. Mr. McCoy owns the building, Mr. Winston. Are you able to put a value on the building as part of the property at that time? Have you an opinion?

A. My recollection of that building is that it has been a pretty fair building. I should say a valuation——

Q. In 1895?

A. In 1895, of approximately $110,000.

Q. The one on the 25 feet?

A. No, on the corner. The small piece, $15,000.

Q. How much?

A. $15,000.

Q. In 1895?

A. Yes, sir, on the 25 feet.

Q. That was built sometime in the '80's. Now, Mr. Winston, what in your opinion, was the property worth, the 95 by 108 feet, assuming it was a fee in 1895 and at the same time the corner, 95 on Clark by 108 on Van Buren where the hotel is built; I mean the real estate, what was its value?

A. I should say that was worth about forty per cent. more than the inside piece. I would put the valuation on that of $2,800 to $3,000.

Q. That is on the Van Buren street frontage?

A. On the Clark street frontage, by 108 feet on Van Buren.

476 The Court: $2800 to $3000, you said?

A. $2800 to $3000. Yes, on the Clark street frontage.

Mr. Walker: Now, assuming that the whole 25 feet, and the other 95 by 108 are in one ownership, what value would you put on it?

A. I would merge the whole thing and make the whole thing worth $2800 to $3000 a foot.

Q. The whole of it?

A. The whole of it, the Clark street frontage.

Q. Mr. Winston, what would you put the value of the building on Clark street at that time, the hotel? You gave it here but it was in response to the 25 feet.

A. I gave the figure before of $110,000.

Q. On the Clark street building?

A. On the Clark street building, yes, sir.

Q. Now, Mr. Winston, what in your opinion, bearing in mind the elevated railroad was built on the street in 1896 and put in operation in the fall of 1897, November, 1897, with the elevated road in operation, what would you say it was worth in November, 1897, and the first part of 1898?

The Court: The 25 feet.

Mr. Walker: The 25 feet, we will say first in a separate owner, and that is in connection with the corner, but taking the 25 feet first.

477 A. Judging from my experience with down town property, I should say it was 30 to 33 per cent., or $2600 in round numbers.

Q. $2600 in round numbers over and above the improvement. That is, without reference to the corner.

A. Without reference to the corner.

Q. What would you say that real estate was worth, that 25 feet, assuming it was attached to the Clark street corner in the same party as owner?

A. I should say that property would be worth in the neighborhood of $3800 to $4000.

Q. As part of the Clark street frontage in 1897 and '8?

A. Yes, sir.

The Court: In 1895.

A. In 1895, I should say the Clark street frontage would be the same.

Mr. Walker:

Q. That would be $3800 to $4000 a foot?

A. That would be $3800 to $4000 a foot. That was immediately after the elevated loop started.

Q. Now, Mr. Winston, what part of the value of the ground would you deduct and give the right of the tenant? That is, what would you say the fee was worth, the rental being $8,000 a year?

A. Based on five per cent. I should say $160,000.

Q. Would you capitalize at the same rate in 1895?

478 A. On the basis of six per cent.; a six per cent. basis.

Q. You would capitalize in 1895 on the basis of six per cent.?

A. Yes, sir.

Q. But at any rate in 1897 when the road came there the $160,000 would be the value of the fee in your opinion?

A. That is my judgment.

Q. And deduct that from the total ground value and add $110,000 for the building, that would give the value of the 108 on Van Buren in your opinion, by 95 on Clark street, the values in the tenant?

A. Yes, sir.

Q. Who owned the building?

A. Yes, sir, in my opinion.

Q. Now, Mr. Winston, have you an opinion as to what the effect of the construction and operation of the elevated railroad was in Van Buren on the market value of the property, on Mr. McCoy's interest at that point?

A. Yes, sir, I have an opinion.

Q. What is your opinion?

A. My opinion is that it has increased the value considerably.

Q. Your opinion is that it has increased the value considerably?

A. In my opinion, yes sir, it increased the value 33 per cent.

Q. Has there been any difference or other increase from that time up to the year 1905? Do you want to make the same objection now that you did before, now that I am coming down to
479 1905?

Mr. Mecartney: Yes.

Mr. Walker: What in your opinion has been the percentage of increase up to 1905.

Objected to by counsel for plaintiff. Objection overruled by the Court; exception by plaintiff.

A. I think the increase has been very marked; possibly forty per cent.

Q. In total?

A. In total. Thirty of that would be caused, in my judgment, by the bringing of the loop there to that particular point, and the rest perhaps by the natural growth of the down town district.

Q. At any time since 1895 or since the road was constructed up to 1905 has it ever been less, any less than it was before?

Objected to by counsel for plaintiff; objection overruled by the Court; exception by plaintiff.

A. I should say decidedly not.

Cross-examination.

By Mr. Mecartney:

Q. Now, what sales did you make in down town property, particularly down town property, yourself, prior to 1895?

A. My recollection was that I did not make any sales of down town property prior to that time.

Q. Have you been through the Jenks building lately, that
480 was on this Jenks' lot, west of the McCoy property?

A. No, sir.

Mr. Mecartney: Do you know what the cost per cubic foot of constructing that kind of building was when it was put up?

A. Not thirty years ago, sir.

Q. Give us your cubic foot value to put up such a building in 1895?

A. I could tell you fairly well from 1895.

Q. Do you know what it was in 1895?

A. I should say that was from eight to ten cents a cubic foot.

Q. Mr. Winston, when you spoke of the elevated loop benefiting this property what element did you consider in it?

A. I considered the trains that went around the loop on Van Buren street, Wabash avenue, Fifth avenue, and Lake Street, that carried the passengers and deposited them at the different stations, and brought them to a certain place.

Q. Is that all the element you considered in ascertaining the effect, the market effect on this property?

A. No, there are other conditions. Other conditions of the growth of Chicago, the other competition lines that pass there, the improvement in transportation facilities. My great increase was caused principally by the loop depositing passengers, the loop trains depositing their passengers at the different stations.

481 Q. I asked you what elements you considered. Is that about all the elements you considered?

A. Those are the principal elements, sir, in my mind.

Q. You never thought of the structure in front of the property? You didn't think of the effect of the structure in front of the property then, did you?

A. The structure would have something to do with it, but you would have to bring the people there to make the structure possible.

Q. Yes, sir.

A. No, I should not say it brought any people there. I never heard of a structure of that kind bringing people there.

Q. Now, I ask you if the elements you considered were both damaging and beneficial elements?

A. That was not the question, as I understood it, Mr. Mecartney.

Q. Elements are elements. Did you just consider beneficial elements and not consider the other, the damaging elements?

A. I didn't consider the damaging elements, inasmuch as it brought the people to that particular point which everybody understands makes the value more than anything else.

Q. Didn't you consider the damaging elements at all in order to arrive at your conclusion that the beneficial elements off-set the damaging elements?

A. The damage from the structure itself might be some
482 damage to the property, but it is so slight, so much off-set by the benefits I would not consider it except very slightly.

Q. What do you think of the structure outside of the element of bringing trains, bringing people to the property, what do you consider that; as a damaging or a beneficial effect on the property? You say that is damaging, don't you?

A. I should not say it was a thing of beauty.

Q. Nor a joy forever?

A. Nor a joy forever.

Q. What do you think, that that structure has or will or would damage that building there independent of the operation of trains and the bringing of passengers there, the structure alone?

A. At that point I should not consider it damaged the property to any great extent.

Q. That structure itself independent of the element of noise of the operation of trains, and independent of the travel which it brings is not a damage to the property, was not a damage to the property, was it?

A. Not to any great extent.

Q. What is the extent?

A. Oh, a very trifle, it is so much off-set by the benefits.

Q. You understand that I am asking you for an estimate without the off-set, don't you?

A. I do not think I could give it to you. It is so slight that I couldn't give you an estimate, Mr. Mecartney.

483 Q. How much more was that property worth by reason of being on the Van Buren street corner than if it were an inside lot at the same time; if for instance there is the Kaiserhof property or ground of the same size?

A. I would judge it would be about 40 per cent.

Q. Forty per cent of its value?

A. Yes, sir.

Q. Mr. Winston, imagine that the other street in front of that property had had a separate kind of structure on it running north and south, going with it, how much would you say that physical damage from the structure alone was to that corner property?

A. I should say if it was near a station that there would not be any damage.

Q. You know I am not asking you for any station positively. I am asking for it independent of any station.

A. It would be impossible for me to figure the damage if there was any.

Q. Are you doubtful about it being a damage to the property if there was any other structure there, eliminating any question of travel benefits?

A. I do not think such a structure as that would be there unless it brought passengers. If it brought passengers, it would

484 not be a damage.

Q. You want to be understood in your testimony as declining to make an estimate of the damage to that property without taking into consideration the passengers?

A. It is beyond me to figure any damage of that sort.

Q. What did you base this estimate of travel benefit on?

A. On the number of people it brings to a certain point.

Q. Give the number of people it brought to that point in 1897 or '8 or any time you choose to take it?

A. Prior to that time?

Q. Yes, sir.

A. I should say it was very slight. After that time a great number of people.

Q. Give the numbers and let us see what you call slight.

A. I never spent my time counting them. I had other things to do.

Q. You had other things to do then?

A. Yes, sir.

Q. If you were asked at that time to give an estimate and you gave it like you do on the basis of the number of passengers what would you think of your estimate if you couldn't give any idea of the number?

A. I should simply say a great number.

Q. A great number?

A. Yes, sir.

Q. And how much per passenger would you say it added? I think it is laughable too.

485 A. I am not very good at mathematics, but a question like that staggers me.

Q. Is it your judgment that the basis, that the element on which an estimate is based is any less conjectural or speculative than the estimate itself?

A. I do not think that is quite clear yet.

Q. I won't insist if you don't understand that question. Do you say that the element of noise from the operation of trains over that loop is an element of benefit or damage?

A. I should say it was neither.

Q. Neither an element of benefit or damage?

A. Neither benefit nor damage.

Q. That is, considered by itself, we are talking now, neither benefit nor damage?

A. The building occupying the spaces, for instance, in buildings around the loop, very soon get used to the noise and do not object to it.

Q. Mr. Winston, you have stated that other elements enter into your estimate of market value and damage as to this property and other traffic facilities. Do you have any idea of how many people were brought to that spot over the Van Buren street cars prior to the loop construction?

A. I haven't any idea as to the number, but I should say the numbers were very small as compared to the number of people that the loop brought to that particular point.

486 Q. Did you ever hear of the Bion J. Arnold report on the system of traffic, written and published for the City of Chicago and prepared by the City of Chicago in 1902?

Mr. Mecartney: Whether you are familiar with it.

A. I have glanced at it, looked at it, the different items with reference to different matters.

Q. If it was shown in that report that the traffic of the city over surface lines was five time- as great as that over the entire elevated system would that agree with your judgment?

—. —.

Q. In 1898 and '9?

A. If it applied to that particular street I should question it. If it applies to the whole street railway system I would believe it.

Q. The entire traffic system of Chicago bears on the market value of every piece of real estate in the city, does it not?

A. Very likely it does.

Q. Do you know what proportion of elevated railroad travel passes over the loop proportionate to the entire travel in the city?

A. No, sir, I cannot say as to that.

Q. Could you give any idea as to the figures?

A. No, sir.

Q. You said a very small proportion of travel before and a good deal after was produced by the loop. Do you know what

487 the proportion had been that the elevated railroad travel had brought—do you know the proportion downtown of elevated railroad travel there was?

Mr. Walker: I object to that.

A. Not in figures.

Mr. Mecartney: Immediately before the loop was constructed for two or three or four years as compared with 1898 after it was constructed?

A. Not in figures.

Q. In proportions?

A. In proportions. No figures at all. My impression was that it was very large in favor of the elevated.

Q. Supposing the figures be produced here to-day, or tomorrow, showing that the total number of people brought down town who stopped at the sub terminals, one of the three elevated railroad terminals used in 1895, '6, '7—those were dull times, were they not, then, in this town?

A. Fairly dull.

Q. Were three-quarters or more of the entire down town travel in 1898, would you change your estimate here any?

A. I might if I saw the actual figures.

Q. You don't. Will you say whether or not the downtown travel produced by the steam railroad, the various steam railroad terminals, increased or decreased from the year 1895 to 1905?

488 A. I could not say but I presume that would be increased.

Q. Would such an element enter into the market value of this property?

A. To some extent, yes.

Q. Would it enter into the market value of this property in connection with other elements or would it do it by itself?

A. In connection with other elements, I should say.

Q. Market value is produced, in fact, is it not, by a lot of elements acting together and influencing each other, is it not?

A. By several elements. The principal element, as I explained before, in my judgment, is the number of people it brings to a given point.

Q. Now, what method have you got in analyzing those in their various elements and figuring out just exactly or approximately how much of the market is accounted for by one element alone. What method have you got?

A. That question is not clear to me. Probably you can put that in a little simple form, Mr. Mecartney.

Q. Supposing the subject isn't any simpler and I can't do it.

A. I think you might put it in a simpler form.

Mr. Mecartney:

Q. What means have you of knowing what was the population of Chicago in 1895, about, in your judgment?

A. About a million and a half.

489 Q. And what was it in 1905?

A. Two million.

Q. Eleven hundred thousand in about 1890, wasn't it? One million and ninety-nine thousand in 1890?

A. I don't remember exactly.
Q. What?
A. I don't remember, Mr. Mecartney.
Q. Well, the general increase in population, does that have an effect on the market value, in your judgment?
A. Yes, sir, very decidedly.
Q. In cities like Chicago prior to the time that the loop was constructed or established, was there any general tendency to centralize values in any particular district of Chicago?
A. To some extent, but not to the great extent that there was afterwards.
Q. You have spoken of the values of various downtown streets here. Take it in 1898 and for some years after the loop was constructed, do you say that property on Van Buren street advanced after the loop was constructed?
A. In my judgment it did.
Q. This property on Jackson street advanced after the loop was constructed?
A. In my judgment it did. Not quite as much as it did on Van Buren street.
Q. Not quite as much as on Van Buren?
A. Not for the first two years. And then afterwards it
490 did advance considerably.
Q. After that it went up?
A. It became a very important street, Jackson Boulevard, and is so now.
Q. Well, the fact was that prior to the loop coming in Van Buren street, it was a very fast growing street, was it not?
A. Jackson Boulevard?
Q. No, no, Van Buren street.
A. No, I should say it was very slow.
Q. With all these office buildings going up there in the few years prior to the loop, do you say that Van Buren street was a slow street?
A. Prior to the loop I would say it was a slow street.
Q. How many times have you testified for the elevated railroad companies in cases affecting abutting property, in cases brought by abutters for damages in downtown property?
A. Two, I believe, prior to this. That is my recollection.
Q. In your judgment is the loop the only plan of construction which would facilitate downtown travel between these elevated roads which existed prior thereto?
A. No, sir, I have passed that. I think that we are advancing and we should advance.
Q. Subways were a known way—were a known engineering method of travel in cities at that time, were they not?

Mr. Walker: At the time of the loop?
491 Mr. Mecartney: At the time of the loop.

The Witness: The only city I remember is possibly Paris, France.

Mr. Mecartney:

Q. Didn't you hear of the London Underground Road commenced in 1863, and finished in 1870?

A. I am not sure that I do remember that. You may be right, Mr. Mecartney.

Q. Assuming that the McCoy Hotel property here was vacant when the loop was constructed and immediately thereafter a building of this character had been constructed upon it. Could you estimate for us the amount of travel that the property would furnish to the loop?

Mr. Walker: That's objected to.

Mr. Mecartney: Or the amount of income it would furnish?
Mr. Walker: To the loop?

The Court: Objection sustained.
Mr. Mecartney: Exception.

JACOB L. KESNER, called as a witness on behalf of the defendants, having been first duly sworn, was examined in chief by Mr. Walker, and testified as follows:

Q. Mr. Kesner, what is your present business?

A. Real estate and investments.

492 Q. And since when have you been making that your business exclusively?

A. The last three years.

Q. Now, had you occasion to make loans or make investments during the period of years when you were connected with that institution, of your own moneys, prior to going into the business exclusively?

A. Yes, sir.

Q. Did you familiarize yourself with the values of downtown property, the rental and market values in the years, say, without going back too far, 1893, 1894 and 1895, and from that time on?

A. Somewhat.

Q. When did you begin, for the purpose of making investments, when did you make your first downtown investment?

A. The first downtown investment was in 1898.

Q. Now, prior to that time did you make studies of conditions before and after the loop was built for the purposes of your own investment?

A. Yes.

Q. Now what properties have you, yourself, and how are they improved, just as quick as you can give them, abutting on the loop and off from it, in the immediate business district, north, say of Polk street, or the Illinois Central depot at Park Row, beginning, if you can give it, chronologically please.

A. The first piece beginning at Wabash Avenue between Harrison and Congress Street, 529 and 531, 40 feet front, 8 story building, on the loop, where it comes around from the south side.

Q. Yes.

A. And then I have the Kesner Building which is the northeast corner of Wabash and Madison street.
Q. That is an eighteen story building, sixteen or eighteen?
A. It is a seventeen story building, it is 56 by 163 feet.
Q. A new modern building?
483 A. Yes, sir.
Q. That is Wabash Avenue and Madison Street?
A. Yes, sir.
Q. Facing the loop on Wabash avenue?
A. Yes, sir.
Q. Go ahead.
A. And then there is 45 feet directly north of that and a five story building.
Q. On Wabash?
A. Facing the loop.
Q. Yes. Go ahead.
A. And then I have a piece on Lake Street, 40 feet west of Clark, that is 40 by 100, with a six story building.
Q. Yes, go ahead.
A. I have 40 feet on Clark Street just north of lake, at the corner of the alley, a three story building, and then I have 184 on Fifth avenue, corner Madison street, facing the elevated structure.
Q. Where in reference to Madison street?
A. That is the northwest corner of Madison and Fifth avenue.
Q. How many feet on Fifth avenue?
A. 184.
Q. How many feet on Madison street?
A. 81.
Q. Eighty-one. Was that acquired at one time or different holdings and assembled by you?
A. No, sir, it is acquired in different pieces from 1905 to last year.
Q. With the elevated railroad in front of it, running along the entire frontage?
A. Yes, sir.
Q. Go ahead.
A. And then I have a piece in the next block, 20 foot front, on the corner of the alley, 20 by 100, and it has a five story building.
494 Q. Which block is that?
A. That is the block between Madison and Monroe on the west side of the street.
Q. All right. Go ahead.
A. And then I have the corner of—well, I have fifty feet on Market street, running back 165, with a six story building.
Q. On the east side of Market Street?
A. Yes, sir.
Q. What is a corner?
A. No, this is north of the corner.
Q. How many feet front?
A. Fifty feet.
Q. Fifty feet front. Go ahead.
A. Then I have the corner of Market and Van Buren, 50 by 80.
Q. Which way is that fifty?

A. Fifty feet on Market street and 80 feet on Van Buren. That has a three story——

Q. At that corner where the Metropolitan passes around in Van Buren street?

A. Yes, sir.

Q. Has a railroad in front of it?

A. It goes on both sides.

Q. On those two pieces, only one road is operated?

A. Yes, sir.

Q. That is the Metropolitan?

A. The Metropolitan.

Q. Has any of that property, any of it taken that corner?

A. Well, the corner is off above the first floor.

Q. Yes. But you have the first floor and it goes at right angles with the lot line, and above it——

A. There is an angle taken off to let the railroad come around.

Q. Where they run the road around close to the building?

A. Yes, sir.

Q. Anything else?

495 A. Then I have 38 feet front on Van buren street just east of that corner of the alley, a 7 story building.

Q. Yes. Anything else—any other properties outside of these holdings—I don't know whether you have any more on that loop at all, but outside of the loop?

A. I have plenty outside of the loop, but that covers everything in the loop.

Q. Well, what have you in the business district outside of the loop?

A. That piece on Plymouth Court, 78 feet by 93, a seven story building. That is just 100 feet north of the loop on Plymouth Court.

Q. Yes.

A. Yes, north of Van Buren street.

Q. All right. Go ahead.

A. I have a new modern building on the corner of Quincy and State street, the northwest corner.

Q. How big a building is it?

A. A 21 story building 62½ by 144½, and then there is 20 feet adjoining that.

Q. Yes, go ahead.

A. I have the Lake View Building on Michigan avenue north of the People's Gas, a sixteen story building.

Mr. Mecartney: Maybe if he would just give a schedule of what he has owned and what he has bought, I think that will do.

Mr. Walker: I will be done in a minute.

Q. That is a sixteen story building and that is where the Municipal Court used to be on Michigan avenue?

496 A. Yes, sir.

Q. Have you any south of the loop in the business district?

A. Yes, sir, I have a piece on State street between Polk and Harrison, forty feet front.

Q. Have you any on Market street or Franklin Street, either here or on Clark Street?

A. No; I have specific market.

Q. All right. Will you give me a little more details of buildings—the two Van Buren Street pieces, the one at Market and Van Buren, what kind of a building is that?

A. Well, the one on Market, fifty feet on Market, is a six story building and that is a mill constructed building.

Q. Six stories, running back 80 feet?

A. No, 165 feet.

Q. All right.

A. I took that leasehold and building.

Q. And then you made improvements in the building?

A. Yes, and then the next piece, I built new. That is a three story building with a white enamel front, where the road runs around the corner.

Q. Now, Mr. Kesner, what are these, mercantile buildings or office buildings?

A. Mercantile buildings.

Q. What is the use of the second floor and third floor of that three story building?

A. The three story building, manufacturers of clothing, clothing manufacturers.

Q. Now, Mr. Kesner, were you familiar with values on Van Buren street and in that neighborhood, say in 1895, before the loop was put in the street or operated?

497 A. I have an idea of what it was worth.

Q. Have you an opinion now of what it was worth?

A. Yes.

Q. Do you know the property in question in this case, the McCoy Hotel and the 25 feet back of that, just east, which is the east 25 feet of the Greenbaum lease?

A. Yes, sir.

Q. Do you know that property?

A. Yes.

498 Q. Do you know the improvements in that neighborhood there on Van Buren?

A. Yes, sir.

Q. Was the property in question, Mr. Kesner—have you—first I will ask you as to the 25 feet, the east 25 feet of lots 20 and 23, the Mendel property. Assuming that that 25 feet was in another owner, in 1895, not in connection with either corner, what would you say the front foot valuation of the ground would be or the total value of the ground without the building?

A. Why, somewhere between fifteen and eighteen hundred dollars.

Q. A foot?

A. Yes, sir.

Q. Independent of either corner?

A. Yes, sir.

Q. Now assume that that property was used in connection with the corner, and as part of the corner, on Clark street, what would it be worth, this ground?

A. Well, take it in with the corner of Jackson—corner of Clark street——

Q. At that same time, 1895.

A. Why, I should say if it could be run in connection with the building, without separate operation, it would be worth at least double.

Q. In 1895?

A. Yes, sir.

Mr. Walker:

Q. Now, Mr. Kesner, take the corner and 99 feet on Clark street by 108 feet on Van Buren, where the hotel building is, what in your opinion was the value of that property, the real estate, in
499 1895, the fair cash market value before the road came?

A. I should say about $3,500 a foot on Clark street.

Q. And there is 95 feet there. Can you give us a total that you say would——

A. Well, multiply that and that would be $375—that would be $332,500.

Q. Now, Mr. Kesner, the leasehold, the fee, in 95 feet of this property on Clark street, had 87 years to run, and the rental for the 87 years still to run, if he had imposed upon it a leasehold which had 87 years to run at $8,000 a year annual rental, under those circumstances, what figure or percentage would you take to capitalize the income to get the value of the fee, if any?

A. At what period?

Q. In 1895.

A. 1895, about five per cent. basis; that would be $160,000.

Q. Then the difference between that and the price you gave on the ground, at $3,500 a foot on Clark street, would be the value of the leasehold interest—of the leasehold running for 87 years, wouldn't it?

A. Yes, sir.

Q. Now, take the year—first as to the 25 foot strip, separately, without reference to its use to either corner, and assume for the purpose of this question, that the elevated railroad was con-
500 structed in 1896 and put in operation in October, 1897, the three railroads running around in it at that time, but the Northwestern coming in in 1900, what in your opinion was the 25 foot strip, in a different owner, worth, in 1895, without reference to either La Salle or Clark street front——

Mr. Burns: You mean 1897, don't you?

Mr. Walker: I mean 1897, and not 1895, after the railroad was put in the street, constructed and operated, say from November, 1897, up to the first of May, 1898?

A. Why, it had gone up a reasonable percentage after that. There was quite a number of people dumped off at the stations, off the railroad.

Q. Well, I will ask you what it was worth. What would you say that that 25 feet was worth?

A. $2,200 a foot.
Q. As a separate piece?
A. Yes, sir.
Q. On the 25 feet. In connection with the whole property, assuming that it could be used, with Clark street, what would you say it was worth?
A. It would be worth double that.
Q. In 1897?
A. Yes, sir.
Q. Yes. Now, Mr. Kesner, take the 95 feet on Clark street, by the 108 feet on Van Buren, at the same period, beginning in 1897, after the road was put in operation, up to the first of May, 1898,
501 what would you say that property was then worth, just the ground?
A. Probably about $4,000 a foot then.
Q. $4,000 a foot on which street?
A. Clark street.
Q. On the Clark street frontage?
A. Yes, sir.
Q. Out of that, what would you capitalize the income of the fee, to give the value of the fee, above the leasehold, at that time in 1897, upon what basis?
A. Well, about that time there was a difference in the value of the land, depending on what value was put on the land, as to what it was capitalized at. It ran all the way from five to four per cent. There were very few four per cent. deals at that time, but from five to four and a half.
Q. It was five it would be $160,000, wouldn't it?
A. On the ground value?
Q. Yes, on the ground value.
A. Yes, that is what it was leased at, on the lease.
Q. It was leased at $8,000 a year, capitalized at five per cent., that would be $160,000.
Q. Mr. Kesner, now, what in your opinion—now, wait a minute. Was there any percentage of increase or decrease from the values last given of $4,000 a front foot in 1897 up to the first of May, 1905, during those periods, and if so in which direction?
A. The increased value from 1897 to 1905?
Q. Yes. You have given $4,000 a foot in 1897?
502 A. Yes.
Q. Now, has there been any increase, and if so what was the percentage up to 1905?
A. I should say about 33⅓ per cent.
Q. At any time since 1895, has there been any decrease in the value, any lessening of the value of that property, the fair cash market value, below the value that you gave as the value of 1895?
A. No, sir.

Mr. Walker:

Q. Now, Mr. Kesner, what in your opinion was the effect of the construction and operation of this elevated railroad in Van Buren

street, this loop, upon the market value of Mr. McCoy's interest in that property, including the 25 feet, and the corner property, the whole thing?

A. Beneficial effect.

Q. What do you mean by that?

A. Well, the property was enhanced in value by reason of the elevated loop.

Q. All right. What proportion if any of the advancement in value that you have given, in figures here, above the price before, and what do you—and what you attribute, or do you attribute to the construction, maintenance and operation of the elevated railroad in Van Buren street?

A. I should say fully half.

Q. Which was the more valuable corner on Van Buren
503 street in 1895, the La Salle street front or the Clark street front?

A. Clark.

Q. And what was the proportion in difference, for the same amount of land?

A. Why, I should say Clark street was worth fifty per cent. more than La Salle street.

Q. At that time?

A. Yes, sir.

Mr. Walker: Which do you say was the more valuable of the two properties, the La Salle street and Van Buren or the McCoy property at Clark and Van Buren?

A. Clark and Van Buren.

Q. In 1897?

A. Yes, sir.

Q. Now, Mr. Kesner, will you be kind enough to tell me upon what you base your opinion of the benefit of this elevated railroad, what factors entered into it, and upon what, in your opinion, transactions, what transactions if any you based your opinion on as to the effect of this railroad being beneficial to the market value of this property?

Q. Well, the concentration of people at different stations around the loop. My own experience has been that I have——

Mr. Mecartney: No, no, he has not asked that. I object to your experience.

Mr. Walker:

Q. Did you take into consideration your own buildings and your own deals in stating that fact, do you?

A. Yes, that is what I was leading up to.

504 Q. Now, Mr. Kesner, were you familiar—you have lived on the south side a great many years, haven't you?

A. Yes, sir.

Q. And lived on the south side at least since 1889?

A. Well, practically 36 years.

Q. Have you been out on the lines of the various elevated railroads at different times?

A. Yes, sir.

Q. Take the South Side Elevated Railroad and tell the jury whether or not the territory south of 39th street, where the road runs between Calumet and Prairie avenue, out to 63rd street, on either side, what proportion of it had buildings on, say for that two miles and a half there, from 39th street to——

A. Oh, I don't think not to exceed fifteen per cent.

Q. Had buildings on?

A. No, sir?

Q. What was the condition of it in 1895, I mean in 1905, the time that the Court put the limit on?

A. Well, up to 1905, probably, I should say, fifty to sixty per cent. was built up.

Mr. Walker:

Q. Now, are you familiar with the corner of Halsted and 63rd street?

A. Yes, sir.

Q. Have you knowledge of what the values have been since the elevated railroad was built contiguous to that property, the frontage of the elevated road?

A. I have a fair knowledge.

505 Q. What proportion of the property was improved before the elevated railroad, compared with the property that has been improved in that neighborhood since?

A. I should say it almost doubled up in through there.

Q. At that time was there any overhead trolleys running and operating in the City of Chicago anywheres east of Halsted Street or Western Avenue or north of 31st Street or south of Chicago Avenue, trolley cars?

A. Up to 1895?

Q. Yes, in 1895.

A. ——.

Q. And south of Chicago Avenue, or North Avenue, and east of Halsted Street?

A. No, sir, I don't think so. It was principally cables up to that time.

Q. And on the cross town lines, like Indiana Avenue, and all those other streets, what was it?

A. Horses.

Cross-examination.

By Mr. Mecartney:

Q. Mr. Kesner, how often have you been expert witness for the last twelve or fifteen years?

A. Well, I think this is the fourth or fifth time.

Q. How many times have you testified for the elevated railroad company represented by Mr. Walker in this class of cases?

A. I think twice before.

Q. How many times have you testified—then you have only testified once or twice outside of this elevated railroad case, isn't
506 that the fact?

A. Well, they were all elevated railroad cases, but I don't think Mr. Walker was in all of them.

Q. Then you have been an expert witness in no cases except elevated railroad cases of this character have you?

A. No, sir.

Q. What do you usually charge or what do you get in this case for preparing yourself and testifying in this case?

A. Why, I don't know, whatever the rest of them get.

Q. What do the rest of them get?

A. I don't know.

Q. What do you usually get in a case of this sort?

Mr. Burns: I object to that.

Mr. Walker: I don't object to the fact that he is being paid, your Honor, I don't object to that fact.

Mr. Mecartney: I will bring my witness back and you can ask him that.

Mr. Walker: Oh, I don't care anything about that. Everybody pays their experts.

Mr. Mecartney: Well, it depends. I think it is vital enough.

Q. How much do you get, usually?

A. It depends on the amount of time, sometimes five hundred dollars, and sometimes more.

507 Q. Did you ever get as little as five hundred dollars in any of these cases?

A. Yes, sir.

Q. How much was the most you got?

Mr. Walker: I object to it.

The Court: What he got in this case or any time he represented this defendant company, he may answer.

Mr. Mecartney:

Q. Yes, the defendant company, what is the biggest amount you ever got for testifying in any of these cases?

Q. Seven hundred and fifty dollars.

Q. Now, you say you have made some purchases along the Loop of large properties and purchased them, at different times. What is the smallest holding that you now have or have had prior to 1905 on any place around the Loop, what is the smallest holding you had or own?

A. The smallest holding I own?

Q. Yes.

A. 1895 or 1905?

Q. 1905.

A. 1905?

Q. Yes.

A. Why, the smallest holding was on fifth Avenue, the west side of the street, between Madison and Monroe, the corner of the alley.

Q. How big is that?

A. That is 20 by 100.

Q. What is the first purchase you made of down town property, Mr. Kesner?

A. 1898.

508 Q. Where?

A. On Fifth avenue between Harrison and Polk.

Q. Where was the next?

A. It was the northwest corner of Fifth avenue and Madison street.

Q. And the next?

A. I think the next adjoins that.

Q. And the next?

A. Michigan avenue.

Q. What year?

A. Between Monroe and Adams.

Q. I say what year? What year was the Michigan avenue property purchased?

A. I think it was 1905.

Q. So that prior to 1905, you only made, not to exceed five or six purchases in the down town district?

A. I got a few other small pieces in there before that, I think.

Q. Mr. Kesner, what opportunities have you had to study the effect of increased travel facilities from various means of transit?

A. Just my own observations.

Q. On what do you base your assumption that you can substantially estimate or estimate with substantial accuracy the particular market effect upon this property of the excess of travel furnished by the loop?

A. By personal observation.

Q. By personal observation?

A. Yes, sir.

509 Q. Have you personally observed various methods of public travel?

A. Not methods but the different stations, and the amount of people at each station.

Q. I am asking you about the loop alone. Have you personally observed various methods of equipment for public travel?

A. Yes.

Q. Have you been in Boston the last ten years?

A. Yes.

Q. Did you ever ride through the Boston subway?

Mr. Burns: I object to that. That has nothing to do with this case.

Mr. Mecartney: I am asking for the various public equipments to test the value of his opinion.

The Court: He may answer that.

To which ruling of the Court the defendants by their counsel then and there duly excepted.

A. No, I observed it.

Q. What particular advantage do you think the loop had to bring travel to the south side over what the railroad had before, those existing railroads which had what we call sub terminals on the south side or in the central district I mean, referring to the south side, the central district.

A. Brought the people nearer to where they wanted to go.

Q. Couldn't the people go where they wanted to go without the loop?

A. By walking, yes. They do not prefer to do that, as a rule.

510 Q. Do you think the extra fare had a great deal to do with the market value of down town property?

A. The extra fare would not have anything to do with it. The loop certainly concentrated the people into a certain district which made the property surrounding the loop more valuable.

Q. You have just said the people could come from sub terminals that might be some distance from their objective point by paying an extra fare. Now, has an extra fare anything to do with it?

A. To do with what?

Q. With market value? Would the lack of the extra fare have anything to do with it?

A. The extra fare would not have anything to do with market value, no. It would at certain points, but generally no.

Q. Generally it would?

A. Generally speaking it would not. At certain points if they do not have to pay extra fare and could get to a certain point it would not increase the property value.

Q. The observations we have made of the different methods of transit in this and other cities, is it not your observation that when property reaches such a concentrated state of values as existed in the down town district of Chicago, immediately prior to the loop, that the payment of an extra fare would not keep it away; at least in large volumes?

511 A. It might keep them away from certain points.

Q. What estimate do you place on this element of increased travel, which the loop brought to this particular property? How much, in dollars and cents, at the time the road was completed and put in operation?

A. Do you mean the McCoy property?

Q. The McCoy property, yes.

A. Between what dates, between 1895 and 1905.

Q. I mean after in October, 1907, how much of the market value of that property was attributable—how much was it increased in value, if you say it was increased, by the people brought there alone, the additional people which you say the loop brought to that property?

A. It was worth $3,500 a front foot on Clark street at that time and I would say a five per cent. gradual increase which would mean say $175: about half of that would be attributed to the people landed there from the loop as it is in between two stations.

Q. Five per cent. increase, for what time?
A. Each year, I think.
Q. After the date I have given you?
A. After it was in operation.
Q. How much right at the time it started operation?
A. I would not say right at the time. You might say
512 on the day that there would not — any perceive any immediate increase. There was some enhancement in value when it was known it was going in. Some people bought in anticipation of what the road was going to do with the property. Others held back.
Q. Held back of what?
A. They didn't know whether it would help it or not.
Q. When did they find out it would help it or not?
A. Within a few months after it was in operation and they had seen the effect of it.
A. How much effect did they see in the number of passengers would you say?
A. I am not qualified for that. I have not kept books on that. I don't know.
Q. You- estimate was based on that?
A. My estimate is based on that, but——
Q. Say yes, or no. Your estimate is based on the additional travel which the loop had brought there?
A. Yes, sir.
Q. And yet you say you are not any judge of the additional travel on which your estimate is based?
A. I did not say I was not a judge. I said I didn't keep count.
Q. What is your judgment without keeping count of the additional travel?
A. My judgment is at all stations around the loop there was considerable increase in favor, of that particular point.
Q. What is your judgment of the increase of this particular point?
A. I think that is probably the third busiest station around
513 the loop.
Q. In numbers?
A. In numbers of people, yes.
Q. What is your estimate of the additional number brought to that station?
A. The additional number of people brought to that point by reason of the elevated loop station?
Q. Yes, by reason of the loop alone, who would not have come there from other elevated railroad travel?
A. I should say there was at least double the number of people dumped off at that station that would come there ordinarily if there was not a loop station there.
Q. Would you say that same thing applies to the average downtown stations on the loop?
A. No, some get more benefit than that, and some get less.
Q. What means have you of making this estimate of benefit from the number of people coming there who would not come there before?

What means had you of finding that out whether your estimate is correct or not?

A. Personal observation. I have been around the downtown section since 1877, and seen the city grow and the people coming here——

Q. When you say that half of this increase is attributable to the elevated roads, the market value, how much in total was the
514 market value increased when the loop was put in operation by reason of the building of the loop?

Mr. Burns: He has answered that.

Mr. Mecartney: I say, no, how much had it increased in October, 1897?

A. I would say within a few months after the road was in operation the property would enhance in value by reason of the people dumped off at these stations.

Q. Then it began to enhance in value a few months after it was in operation?

A. Yes, sir.

Q. Why did you say yesterday, it enhanced in value at the time and two or three years before?

A. I didn't say so.

Q. You do not want to be understood so?

A. No, sir.

Q. Then the beginning of the enhancement in value by reason of the construction of the loop and the people brought there began in your judgment a few months after the loop was put in operation?

A. In most cases, yes.

Q. I am talking of this particular property?

A. I would say all property really was increased in value after the loop was put in operation. However some of it was increased before by reason of people wanting to take a chance buying in advance of the increase.

515 Q. How can you tell after you have found out and based an estimate here upon the additional travel and then say that that depends upon the character of the business managed, how can you separate business management as an element in your calculation of value? How can you value the increase of business management here?

A. I do not take that into my calculation at all. I said there was an intrinsic value to the property in my judgment.

Q. What elements did you take into consideration when you made this estimate of increased market value commencing several months after the loop was put in operation?

A. Because practically all the points where there was a station around the loop the rentals increased; in some cases, a great deal more than others.

Q. You think then an increase of rentals, that is one element. Now, what other element did you take into consideration in estimating the market effect upon this particular property?

A. The number of people passing a certain point.

Q. I am talking about this point.
A. Yes, sir, this point, will give a basis for increased rentals.
Q. And an increase of rentals?
A. Which would increase the value of the property.
516 Q. Have you based that on the increased rental or have you based that on the number of people passing the property?
A. Based on the number of people passing the property.
Q. So which ever way you adopted you get back to the increased number of people passing the property?
A. Yes, sir.
Q. Is there any other element that you ought to think of and try to estimate in making this estimate of increased benefit?
A. Not that I think of.
Q. And sitting there now you can think of no other element that you ought to add when you try to estimate the effect on the market value of this property from this loop structure—no other element. (No response.) Well, we will let you look at the photographs. Look at that one looking northeast from the foot of the stairway of the elevated station right a little west of this property. Would you not think that you ought to consider some effect on the property by reason of the structure and that appears as that photograph shows it to you, if you are going to estimate the question of effect on this property?
A. No.
Q. You would not think you ought to think of that; it is not necessary to think of it?
A. No, that is a necessary evil in a big city to bring people
517 down. It has helped the property in bringing the people down.
Q. Does that structure there help the property?
A. The people could not get there if they didn't have the structure.
Q. You said it was a necessary evil. Don't you think it is necessary in trying to work out the market effect on the property to consider a necessary evil and balance the damaging element against beneficial elements? Would you not think it was necessary to do that?
A. I do not think this hurt the intrinsic value of this particular property.
Q. What has not hurt it?
A. The structure.
Q. The structure alone?
A. The structure in operation.
Q. The structure, independent of operation?
A. It would not be there if it was not operated.
Q. Suppose it was there and is there?
A. It would not be there unless it was operated.
Q. Suppose it is put there and failed to be operated and wasn't able to be operated at all, and was to remain forever without operation, would that be a damage to the property or a beneficial element?
A. I could not conceive of any such proposition.
The Court: The question is if there was such a possibility.

A. If there was such a possibility, naturally it would not
518 help the property any.

Mr. Mecartney: Did it damage the property any?

A. If it stood there without being used, as the Court has ruled it should be answered, naturally it would not help any.

Q. Have you any objection to saying it would damage it, Mr. Kesner?

The Court: If it stood there without being used?

A. It probably would be some damage to the property.

Q. Supposing it were there, and also operated and there were no stations on that particular railroad within say half a mile of the property, and it was to be always operated, and assume that it was to be operated in that way, without any stations within half a mile either side of the property or say three-quarters of a mile on either side of it, you would have simply the structure and the noisy operation of it; would those two elements together be an element of damage or benefit?

A. It would be a damage to some extent.

Q. Didn't you think it was necessary for you to consider these elements in off-setting what in your mind is the increased travel facilities furnished by the loop?

A. No, sir.

Q. You cannot think of that without thinking of the passengers, can you?

A. No, sir.

519 Q. Assuming there was a farm out here beyond Hinsdale, and one or two steam railways in the neighborhood leading into Chicago and another railroad was going to be located, or was located alongside of a forty acre farm with a farmer's house in the middle of it and facing a public road, about ten feet away from the road fence a steam railroad was to run either on the level or
520 on an embankment according to the ordinary plan, and was to run ten feet away from the farmer's house and close up and run along the entire length of the road in front of it, starting at one end of the forty acres and running to the other end and they were going to condemn the damage to that farm, and possibly might take a little corner off one corner of his farm; the road would turn and take off an acre or two on the corner, and assuming you had a knowledge of farm values you were called to the stand as an expert before a jury like this and you were asked to estimate the damage to that farmer by reason of constructing that railroad immediately in front of his house and running along the entire street, and taking off a portion of his farm, you get the illustration, don't you?

A. Yes, sir.

Q. And you were told to exclude from consideration any suggested increase of value to the farm made up by reason of the farmer being furnished with an additional market trade for his premises, and assuming that the stations are a mile or two away from this new railroad, so as to have practically no effect, and whatever effect it had you were to exclude from consideration, could you, with a knowledge of farm values, estimate that man's damage?

(Objected to by counsel for defendants.)

The Court: On the assumption he was acquainted with the values of the farm property.

521 Mr. Mecartney: Exactly.

The Court: I don't understand he is brought here on that proposition, but the same situation applied to the city is what you mean, if it may be so applied.

Mr. Burns: In this case, the question of Mr. Mecartney involves the taking of property.

Mr. Mecartney: Leave out the taking of the little corner piece. Leave that out now.

Mr. Burns: And another thing: It is not a parallel situation.

The Court: That is a matter of redirect and a matter of argument, but the question is whether it is competent to answer a question of that kind in view of the fact that he is acquainted with such property and not acquainted with farm property.

Mr. Mecartney: Assuming you were acquainted with the values of farm property, can you assess that land damaged by the railroad, and were told to exclude whatever benefit might come to the man's farm by reason of the increased market facilities; can you do that?

Mr. Burns: He said that there was no taking of land. It is a condemnation suit.

Mr. Mecartney: Taken or damaged. They could file a condemnation suit to assess the damages. Could you estimate in
522 that situation the damages, do you think: yes or no?

A. Yes.

Q. You say yes.

A. Sure.

Q. Now, supposing this railroad in question in front of this property was a railroad connecting on the west side with the Aurora & Elgin line, and with the South Bend line running from the central district south and southeast, to South Bend, and the purpose of the structure was simply to give free travel from one line, the west line to the south and south east line, and the franchise granted provided for a structure which would eliminate passengers getting off at those premises or near it and you had this same structure there: Could you in that case, estimate the damage, do you think to this property, or couldn't you?

Objected to by counsel for defendant. Objection overruled by the Court; to which ruling of the Court, the defendants by their counsel then and there duly excepted.

Q. Could you, yes or no.

A. Yes.

Q. Then why can't you estimate the damage to Mr. McCoy's property from this structure alone without thinking of passengers?

A. If it was a parallel case and he was not getting any ben-efit——

523 Objected to by counsel for defendants.

Q. I am trying to test your judgment with a case which is not exactly parallel, in order that the jury may judge what it is worth if it was exactly parallel.

A. If this farm had a station close by, it would not be a damage to that farm. In my opinion, it would improve his farm.

Q. Mr. Kesner, you assume that the station and structure in front of these premises was and is the same as it was in 1897 when the road was put in operation?

A. 1897, yes, I think so.

The Court: He is asking you to bear that in mind.

Mr. Mecartney: Yes, in 1897, and assume that when this railroad was put in operation, the loop was put in operation certain permanent changes had been made in transportation facilities of the neighborhood by which this property lost just the amount of benefit from public travel in numbers at that point as it gained from your loop road; Do you get that illustration?

A. Yes.

Q. Now what in your opinion would have been the difference in the market value of those premises in October 1897?

A. There would not be any difference if you put something in to off-set the benefits. It would remain about where it was less what damage would be proved by reason of these other elements that were brought into play.

Q. Are you assuming before this new road was put in, this structure was put in, are you assuming now that the property had just as much travel with the open street in front of it; Van Buren is all an open ordinary street, and then a structure is put in, and after that the property has just as much public travel as it had before, would the market value be increased or decreased?

524 A. If there had not been any increase of travel then of course there would not be any benefit, but there has been increased travel.

Q. I ask you whether the property would have been exactly the same if the travel before and after was the same and before there was no structure in the street and after there was and it was to remain there fovever.

A. Assuming that the travel on the street before the structure was up and after the structure was up, that the travel had not increased at all by reason of the structure and station being there, then the property would not be worth any more.

Q. Would it be any less?

A. I think so.

Q. Have you ever tried in estimating how much less it would be worth by reason of the structure, the whole thing that the property then would have gained or lost would be a noisy structure like this in operation in the street? That is all he would have gained, or lost? Is that so?

A. Not necessarily. It all depends on conditions. If that was the true fact, then somebody that made a study could estimate what

the damage would be but the facts have not been that way. My mind does not run that way.

Q. Your mind runs to travel and income and increased rent?

A. No, my mind runs to actual conditions, and that is what I have testified to.

Q. You have tried to estimate one element here in a situation, one element of travel benefits in a situation?

A. Yes.

Q. Now, if you say that you cannot estimate the other element we will stop at this place. Can you estimate the other ele-
525 ment of this structure and its noisy operation and effect on the market value produced by it?

A. If there was not any other element of benefit and that structure was not benefiting the neighborhood in any way, naturally there would be some damage, but I would not want to say what the damage would be.

A. But it has not been a fact and nobody has estimated it on that line.

Mr. Mecartney: Assume nobody has estimated it along that line; what anybody else has estimated does not concern you- estimate?

A. No, but there is no data in the sales of property on account of such a condition. There has been no such condition, and consequently I have not personally made any estimate of it, or expressed any opinion.

Q. Do better business conditions increase travel on the public lines of the city or decrease it, yes, or no; increase or, decrease it?

A. It all depends. People have to travel whether business is good or not.

The Court: The question is does better business increase travel?

A. I do not think, your Honor, I can answer that. I think you would have just as much travel if business was bad.

Mr. Mecartney: Does increased population tend to increase values in a big city, or not?

A. Yes.

526 Q. Does the growth of a big city like Chicago tend to centralize in certain districts as to values in business? Does it tend generally to centralize as it grows bigger?

A. Yes, sir.

Mr. Burns: Just one question: Do you know any place in the city of Chicago where an elevated railroad structure has been constructed and then not used for the carrying of passengers?

A. No, sir.

HENRY A. KNOTT, recalled on behalf of the plaintiff herein, was further cross-examined by Mr. Walker and testified as follows:

Q. Is it not a fact that the instruction to the Swift Commission in 1896 was to put such a value so that the basis might be put on one-tenth of it; yes or no?

A. No.

Q. Do you know that it was not on one-tenth the amount, the recommendation for the taxation?

A. I do.

Q. Don't you know, at the time you testified, that the assessors' valuation, if that is what you call it, was less than one-twelfth of the valuation put on by the Swift Commission when you testified?

A. Yes, sir.

The plaintiff moves to exclude from consideration of the jury and to strike out, moves the court to strike out and exclude from consideration of the jury all evidence introduced in this case in respect to an alleged increase of market value accruing to the premises in question by reason of increased travel facilities furnished by the loop railroad.

The Court: Is that the end of that motion?

Mr. Mecartney: Yes.

527 The Court: That motion will be denied.

Mr. Mecartney: Exception.

Mr. Walker: If he has got some motions to make we will agree he may make them as though he had not introduced any evidence before making them.

The Court: At the close of the defendants' case, and to be considered at such time as you think they should be with reference to the state of the testimony, I mean the place in the testimony or the proceedings where you want them to appear.

Mr. Mecartney: Yes, at this time, I think there are a few items. They are not important, but I want to prove a few facts.

Mr. Walker: We agree that he may make his motions at any time, any motions that he might make at the close of the defendants' case before calling any witness to the stand in rebuttal.

And thereupon the plaintiff to further maintain the issues on his part introduced the following evidence in rebuttal:

L. C. ESCHEN, called as a witness on behalf of the plaintiff herein, having been first duly sworn, was examined in chief by Mr. Mecartney and testified as follows, in rebuttal:

Q. What is your business?

528 A. I am the auditor of the passenger receipts of the Illinois Central Railroad.

Mr. Mecartney: Mr. Eschen, how could the figures be compiled so as to show the travel at those stations during the years I have mentioned?

Mr. Walker: I object to it.

Mr. Mecartney: Are there detailed books and records by which that could be done.

The Court: I am not passing now on that, but let him answer this question.

Objection overruled by the Court; to which ruling of the Court the defendants by their counsel then and there duly excepted.

Q. (Last question read.)

A. Well, if the working sheets, the statistical working sheets were available they would show the business from and to Randolph and Van Buren street as to the number of passengers carried. I have one of our recent statistical reports, if you want to see them.

Mr. Mecartney: You mean, to show the method in which it is made up?

A. Yes, how we arrive at it.

Q. Before you show that, do you know whether that method was in vogue during these years about which I have asked you?

A. I am quite sure it was.

Q. How much work would it take for you or for any one to compile the travel to and from, the travel at those stations for those different years?

529 A. Well, that would be a considerable task. I should say off-hand, perhaps, it would take one man a couple of months to draw it off in the shape it is in, possibly.

Q. Now, your reports of suburban traffic are made in the ordinary course of business. This suburban traffic you have mentioned, the reports of the yearly suburban traffic, are they made in the ordinary course of the business of the company?

A. Do you mean the statistical sheets or the reports from which they are made?

Q. Yes, both of them.

A. Yes, sir, that is something that we regularly compile, is statistical information for the suburban service.

Q. I am going to ask you now, if you have that compilation from any reports or books made or kept in the ordinary course of business for the Illinois Central Railroad Company which will show the total suburban travel for the years above which I have named.

A. I anticipated that you would want those figures and so I specially prepared a statement from our record which shows the number of passengers, revenue passengers carried for the fiscal years 1894 to 1895, inclusive. I have that, a copy of that here.

Q. Well, now, that fiscal year is one or was one during this time?

A. It ended June 30th.

530 Q. Well, then your 1894 report there would include some of this World's Fair traffic?

A. Yes, very abnormal on that account.

Q. Well, now, we will omit that. The first fiscal year then, that is independent of this Fair, the World's Fair influence, the first fiscal year would be for 1895, would it not?

A. Yes, sir.

The Court: That is the total.

Mr. Mecartney: Yes, the total. Now, I will ask the witness to give us the total travel of that suburban department of the Illinois Central for the fiscal years 1895 to 1905 inclusive.

Mr. Walker: I object to it, not that they have not brought in the original books.

The Court: I understand.

Mr. Walker: I don't make that objection. I object to it as incompetent, irrelevant and immaterial and was part of their original case——

The Court: I understand this is not merely for Van Buren street.

The Witness: This is the whole suburban district which extends from Chicago to Flossmore, including the South Chicago and Blue Island branch.

The Court: Yes, including South Chicago and the Blue
531 Island branch.

Mr. Walker: Yes. I object to it.

The Court: He means that everything is in there.

Mr. Mecartney: The general increase of suburban travel. We take a suburban district to the downtown district which is served by the loop and from which they claim as an entirety, is a benefit to this property, and the only claim they could make——

The Court: Well, if they were figures on Van Buren street and figures even at Randolph street, why, I would unhesitatingly admit it, Mr. Mecartney, but they being general and including every bit of traffic that may be between those stations, understand, the development of many districts, possibly may be involved therein and therefore, I could not admit it.

Mr. Mecartney: Now, I am asking the witness, having stated that it would take several months to make the estimate of that, of the travel on this one line downtown at these two stations, I am going to ask him if from his experience he can make—if you can make or show yourself competent to make an estimate of the proportion of the total travel in each year in that department that was furnished at or to the Van Buren and Randolph street stations or can you—do you feel yourself competent to make a minimum estimate of the proportion of the entire business done that was done at those two stations?

Mr. Walker: That's objected to.

The Court: If he can answer it, let him answer the ques-
532 tion.

The Witness: I have a very good idea of that, yes, sir.

Mr. Mecartney: And has that been acquired in the course of your business from the examination of the books and those statistical reports from time to time, in the course of your business?

A. No, it is just the knowledge of the work, that would lead me to believe that it is a certain per cent. In fact——

Q. Don't say what it is yet, you know.

A. I sometimes tried that out, just as a matter of information.

Q. In connection with your work?

A. Oh, yes, indirectly, for instance, when they considered the various schemes for making calculations, and so forth; for instance, our pay-as-you-enter plan or something of that kind.

Q. Now, I will ask you to make an estimate of the proportion of the travel done at those two stations and the total done during these years in each instance.

Mr. Walker: That's objected to.

The Court: I don't know, Mr. Mecartney, whether that would be competent or not.

Mr. Mecartney: It just all shows what we get into when we get into this question of travel benefits.

Mr. Walker: No, it don't.

The Court: Is there a record kept of the amount of traffic
533 at Van Buren street?

The Witness: We have reports, I think, for those back years.

The Court: Why wouldn't they show it then?

The Witness: Well, they would have to be compiled. As I understand it, you want the traffic to and from.

The Court: No, simply the number of passengers paying at Van Buren street.

Mr. Mecartney: Yes, that would be sufficient.

The Witness: I don't believe they would give you very much information on it from the fact that we sell so many commutation tickets. For instance, under our pay-as-you-enter plan most of our commutation tickets are bought at the home station which materially reduced the sales at Van Buren street and all these stations by reason of the commutations sold outside.

Mr. Mecartney: Did you have commutation tickets in 1894?

A. Oh, yes, we always have had them.

Q. But there is a compilation that could be made to show the number of passengers, is there?

The Court: Do you base that knowledge with reference to the amount of business done there by reason of your familiarity with the figures that are in the books?

The Witness: Well, yes, general knowledge of the suburban situation. I think I can give you a pretty fair idea.

The Court: Do you mean as to the accuracy?

The Witness: It will be compared, it will be correct.

534 The Court: I think I will let him answer.

Mr. Walker: Exception.

To which ruling of the Court, the defendants by their counsel then and there duly excepted.

Mr. Mecartney:

Q. Now answer as to the proportion of people?

A. Well, I should say that the proportion of traffic to and from the city on our suburban line is in the neighborhood of 75 per cent. The balance of it is outside, between stations.

Mr. Mecartney: Now, I will ask you to read off that total traffic for each year.

Mr. Walker: What does he mean, Van Buren, 12th or what?

Mr. Mecartney: The question was Van Buren and Randolph street. Did you so understand it?

The Witness: Randolph and Van Buren combined. The rate is the same, that is what we call the "city."

The Court: Van Buren and where else?

The Witness: Van Buren and Randolph combined. There are two stations combined.

Mr. Mecartney: Now, I will ask you to give your total figures of traffic for the year.

Mr. Walker: I object to it.

The Court: He may answer.

The Witness: For the fiscal year ended June 30th, 1895—that is the one you want, is it?

535 Mr. Mecartney: Start with that, yes.

A. 8,007,141. If you want, Mr. Reporter, I can give you these. You can follow the figures. You may each one of you take one of these and I will read from here. For the year 1896, fiscal year, 9,132,227; 1897, 9,156,901; for the year 1898, 9,393,116; 1899, 9,616,064; 1900, 10,641,869; 1901, 10,869,200; 1902, 11,683,023; 1903, 12,996,289; 1904, 14,094,656; 1905, 12,954,919.

The Court: That means passengers going and coming, doesn't it?

The Witness: Yes, sir.

The Court: Not only one way. That is, taking them away from the center of the city as well as bringing them down?

The Witness: Yes, all the passengers handled in the suburban district. The statement is headed——

The Court: Your 75 per cent. was the correct propo-tion—it would be half of that, you figured, coming to the city?

The Witness: Yes, sir.

Mr. Walker: No, it would be 75 per cent. of that.

The Court: I mean one-half of 75 per cent.

The Court: Take 10,000,000 for one year, he says three-quarters——

Mr. Walker: That would be 7,500,000. That would be one-half of that then.

The Court: That would represent the number of people
536 brought into the city and the rest would be considered taking out of the city, is that what you mean?

The Witness: Yes; the seventy-five per cent. would split, fifty and fifty.

Mr. Walker: I move to strike out this testimony.

The Court: Yes; motion denied.

Cross-examination.

By Mr. Walker:

Q. What proportion of your increase of your 75 per cent. applies to Van Buren street as distinguished from Randolph?

A. I would not be in a position to say that.

Q. That's all right. That's enough. Now, the Randolph Street Station of the Illinois Central is how far from the corner of Clark and Van Buren Street. Are you familiar with the blocks in that territory?

A. Yes, sir, I should say off hand that is about ten blocks or something like that.

Q. And the Van Buren Street station is about a block east of Michigan Avenue, isn't it?

A. Yes, sir.

Q. From Michigan to Wabash is another block, that's two?

A. Yes, sir.

Q. To State Street, is three, Dearborn four and the corner of Clark is five blocks from the Van Buren Street Station, and the other is about twice the distance, is that right?

537 A. I believe it is just about that.

GEORGE C. SIKES, called as a witness on behalf of the plaintiff herein, having been first duly sworn, was examined in chief by Mr. Mecartney, and testified as follows, in rebuttal:

Q. In the year 1902, with what special work were you connected, if any, and if you recall?

A. At that time I was employed by Mr. Bion J. Arnold, who was making a special report to the City of Chicago on the street railway problem.

Q. Did you aid in collecting the data and in making up that report in any respect?

A. I did.

Q. Were you living in Chicago from the year 1892 up to 1902?

A. I came to Chicago in 1893, and I have lived here since then.

Q. Did you have occasion, in connection with your work, to study the history of transportation conditions in Chicago to some extent.

538 A. Yes, sir.

Q. In the course of that work did you have any occasion to make or help in making figures which would show the proportionate increase in public travel or street car travel——

A. I helped——

Q. As compared—well, in street car travel, yes.

A. I helped to do that work. You must bear in mind in the preparation of the Arnold report that a number of men were engaged. It was——

Mr. Mecartney:

Q. Can you tell from recollection or from any reference in that report the total street railway travel in Chicago for the year 1898?

Mr. Walker: Objected to.

The Court: Objection sustained. Unless it is shown that those figures were taken from the books and these books are not in evidence and cannot be procured——

Mr. Mecartney:

Q. Can you tell where the information as to street railway travel, embraced in that report, was obtained, from what source it was acquired?

A. There were two sources. In the first place if I may state——

The Court: Just a moment. What do you know of your own experience?

Mr. Walker: Yes. What somebody else told him is different.

The Court: What anybody told you is not competent, but
539 what you yourself know by reason of your doing in, you understand, or seeing it done, so that either your senses or your intellect brought it home to you, I mean actual contact with the work——

The Witness: Well, I did not compile those figures basicly. Is it competent for me to tell how—tell who did compile them and what I know about the compilation?

The Court: Well, that you only know from hearsay, don't you?

The Witness: Part of it I checked over, partially.

The Court: That is, you checked over the totals, I take it, you simply checked over the other man's work?

The Witness: Well, the figures are in totals.

The Court: The figures are in totals, and it is the result of other men's work.

The Witness: Yes, sir.

The Court: On which, therefore, you must take their word in having been done correctly in passing your own judgment on it?

The Witness: Yes, sir, partially one man's work and partially with reference to other published figures, and I know what they say about them.

The Court: Yes, I see. Objection is sustained.

Mr. Mecartney: Exception.

Q. What man if you know made the figures to show the
540 total street railway travel and the total elevated lines of travel?

Mr. Walker: Objected to. I object to it.

The Court: Was it more than one man upon which you are taking it as a basis of?

The Witness: It was primarily done by one man and supplemented somewhat by others.

Mr. Mecartney: Who is the primary man that you refer to?

A. George A. Yuille.

Q. Can you state as a result of your work in connection with this report, or by refreshing your recollection with it what the total amount of street railway surface travel was in the City of Chicago for 1898?

Mr. Walker: Objected to.

The Court: I will let him answer whether he can tell.

To which ruling of the Court the defendants by their counsel then and there duly excepted.

The Witness: I would have to refer to the table in that report. I don't remember it off hand.

The Court: Well, it would practically be what would be said in that report, wouldn't it, Mr. Sikes?

The Witness: Yes, sir.

The Court: Therefore the Court would say that any answer based on that report under the present state of the proof is incompetent, irrelevant and immaterial.

Mr. Mecartney: Now I make the——

541 The Court: I think you have put the question fairly in the record, but if you want it in any better, you may make your record, if you desire, Mr. Mecartney.

Mr. Mecartney: Yes, your Honor. Now, just one moment.

Q. Mr. Sikes, in connection with that report, did you make any investigation, either yourself, or in connection with others as to the state of congestion or lack of congestion which existed on the loop railroad in the year 1902.

Mr. Walker: Objected to.

The Court: Objection sustained.

Mr. Mecartney: Exception.

Mr. Mecartney: Was there a time in the day when the loop road carried more passengers than others, according to your observation, in 1892?

A. Yes, there were two periods of what they call a rush period, one in the morning and one in the evening, and as a rule the one in the evening is a little more tense than there is in the morning.

Q. Now, referring to 1902, did that same condition exist then in 1902?

A. Yes, sir.

Q. I will ask you whether you made any observations then with reference to the capacity of the loop, to accommodate or carry the passengers on those, in that time—during those rush hours.

542 Did you make any observations or study on that subject?

Mr. Walker: That's objected to.

The Court: Objection sustained.

Mr. Mecartney: Exception. That is all Mr. Sikes.

Q. Mr. Sikes, just one moment. Look at the document now shown you and state what it is.

A. It is a report——

Mr. Walker: It shows that it is itself. I admit it is what it shows it is.

Mr. Mecartney: All right. That is all I want. Now, I offer to read from this Arnold report the amount of surface travel indicated by it for the year 1898, that is the street railway surface travel in the City of Chicago.

Mr. Walker: Objected to.

The Court: Objection sustained.

Mr. Mecartney: I offer to read from that report the amount of elevated road travel in the City of Chicago from the year 1894 to the year 1898 inclusive.

Mr. Walker: That's objected to.

The Court: Objection sustained. The elevated road in 1894?

Mr. Mecartney: The elevated road in 1894, 1895, 1896, 1897 and 1898.

Mr. Walker: He wants to read it from that book. We can give him the figures from ours. We would be very glad to do it. It is the source of his claimed information, your Honor.

543 The Court: Objection sustained.

Mr. Mecartney: Well, exception. I assume then that counsel is going to do that, so it is all the same.

CHARLES RUSSELL MAHAN, called as a witness on behalf of the plaintiff herein, having been first duly sworn, was examined in chief by Mr. Mecartney, and testified as follows, in rebuttal:

Q. What is your business?

A. Assistant auditor of the Metropolitan, Northwestern and the South Side Elevated Railways.

Q. Who is your superior in office, if any one?

A. Mr. T. B. MacRae.

Q. There has been read off in evidence here the travel from certain stations of the loop in the railroad district in 1897, a portion of 1897 and 1898 and other years. Have you got the figures that show the travel at the Congress street station of the alley "L" road, so-called, in the year 1894?

A. Yes.

Q. Please let us have that figure?

A. The Congress street, the calendar year ending December 31st, 4,568,745.

Q. For the year 1895, the same station?

A. 4,960,560.

544 Q. 1896?

A. 4,826,300.

Q. 1897? Can you separate the travel at that station before the loop road was put in operation, and tell us what the amount would be for the nine months and a fraction, or if you want to, first give the total and then you may subtract, whichever way you desire?

A. The entire system of traffic, is that for 1897 the South Side line?

Q. No, the——

Mr. Walker: Have you been giving it entire or only Congress street?

The Witness: Congress street.

Mr. Mecartney: No, give us just Congress street from 1897.

A. 3,720,910.

Q. Now, can you take off the—now, after the loop, can you take off——

Mr. Walker: Maybe that figure included all there was before the loop was operated? Doesn't it?

Mr. Mecartney: Now, take off the month when the loop was put in operation—tell us how much the net amount was, October, November and December, or better still, give us the first nine months.

The Witness: Well, the three months would be 505,850. That is October, November and December.

Mr. Mecartney: Now, take that off and give us the nine
545 months, please, the first nine months?

A. 3,215,060.

Q. Now, give us if you can the total revenue—that is the total revenue passengers that paid fare at that station, is it not?

A. It is.

Mr. Mecartney: Now, have you a report there for the year 1895 as to the——

A. I have it if you will allow me to get it from that——

A. Is this, it?

A. Yes, that is it. Thank you.

Q. First, tell us how many downtown stations the Metropolitan road had when it was first opened?

A. Franklin street and Market street at that time were one station but two booths. There was a booth for Market street and another over at Franklin, so there was only one station but two entrances.

Q. Please give us the total travel in 1895 at those two stations or that one station?

A. I can give it separate or combined, whichever you prefer it.

Q. Give it separate.

The Court: What difference does it make, whether it is separate or combined?

Mr. Mecartney: Well, combined.

Mr. Walker: It is all one station, two ticket offices.

A. From May to December 2,365,973.

546 Mr. Mecartney: Take the same thing—is not that from July 1st.

A. No, I might make an explanation there if you allow it.

Q. Do it.

A. In May and June the traffic we have here was simply traffice given to our officials by the construction company. It was not operated at that time by the railway company, but was operated by the construction company, during a period for which we have figures commencing in July, 1895.

Q. Then give me your figures. July 1st, was it?

A. July 1st.

Mr. Walker: It was operated before the Company accepted it?

A. That is right.

The Court: What is the difference as long as you have the total.

Mr. Mecartney: He has given the other. Now, I would like to — their own original figures. That makes a half year.

The Court: Two months more than a half year. Are you adding those two months now.

A. Yes, sir.

Q. All right.

A. With the two months out it is 2,082,526.

Mr. Mecartney: Now, for the year 1896, the total?

A. 4,540,044.

Q. For 1897?

A. 3,482,185.

Q. Now, have you got the totals of the traffic——

547 Mr. Walker: Does that last include the three months they ran around the loop, or is that independent of that?

A. That includes everything.

Mr. Mecartney: The three months they ran around the loop.

A. That they ran around the loop.

Q. What is the amount separate for the three months there?

A. Cutting the three months out it is 3,177,077.

Q. Now, have you got the totals of travel on the stations during those years 1904-5, '6 and '7, of the Lake Street Elevated Railroad on the South side?

Mr. Mecartney: The Lake Street elevated I mean in the central district, the downtown district?

A. Yes, sir.

Q. You have those?

A. Yes, sir.

Q. Of that Lake street elevated railroad?

A. Prior to March 1, 1894, it was operated by the construction company. There was no figures available. For the balance of the year, it amounted to 8,206,304.

Q. What stations?

A. That was the entire system of traffic.

Mr. Mecartney: Can you give—can you show us the total passengers at the Congress street station on the alley road, which was put in operation in October, 1897, for the balance of that year in 1898? Can you give us that?

A. As far as the book I have here goes to 1897, I can give

548 it to you for 1897, Congress street station on the South Side. You have that, I believe.

Q. I don't understand you, Mr. Witness.

A. I say on the South Side loop for 1897, I have the figures here, but nothing for 1898.

Q. Now, have you got there the total elevated railroad travel for these different lines?

A. I have.

Q. In the City of Chicago, say, from 1894 to 1898 inclusive.

A. I have, yes, sir.

Q. Please read that off.

A. 1894, 21,794,095. 1895, 32,379,406. 1896, 39,807,422. 1897, 41,543,667.

Q. Now, 1898?

A. 55,204,838.

Q. This goes to 1895 and '6. Is there not some elevated travel that is left out of your figures or would you not know whether it was or not?

A. Why, not that I know of.

The Court: You have not got the Northwestern yet. That was not in operation then?

A. No, that was not in operation then.

Cross-examination.

By Mr. Walker:

Q. But you have not the available information as to what people got on at the nearest station to Van Buren and Clark within the Loop territory?

A. No, sir.

Q. The station you have given is the Congress street station, the old Congress street station in the middle of the block, between Wabash and State street on the south side of Congress, and the station between Market and Franklin of the Metropolitan?

549

A. That is right.

Q. From their records the number of paid passengers at those given stations?

A. Yes, sir.

Q. That means the number that got on; is that right?

A. That is right.

Q. What was 1899?

The Court: 1898, first.

Mr. Walker: He gave 1898, as 55,000,000.

Mr. Mecartney: I object to going into 1899. I confined the witness' attention to the first year after the loop was opened and I object on the ground that if later years should be gone into, then it would be only admissible in connection with the figures of other traffic, conjectural, speculative, valueless and confusing and it ought not to be gone into.

Objection overruled by the Court; exception by counsel for plaintiff.

Mr. Walker: 1899.

A. 64,794,633.

Q. 1900?

Objected to by counsel for plaintiff; objection overruled by the Court; exception by counsel for plaintiff.

550

A. 81,285,273.

Q. 1901.

A. 95,608,234.

Q. 1902.

A. 106,516,059.

Q. 1903.

A. 114,873,598.

Q. 1904.

A. 117,887,425.

Q. 1905.

A. 123,599,107.

Q. That is all.

Mr. Mecartney: My objection and exception is preserved to all these figures, is it?

The Court: Yes, the objection is overruled, and exception to each.

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J. MACBEAN STAFFORD, called as a witness on behalf of the plaintiff herein, having been first duly sworn, was examined in chief by Mr. Mecartney, and testified as follows, in rebuttal:

Q. What is your business, Mr. Stafford?
A. Ticket agent at the La Salle street station, Chicago.
Q. For what road?
A. At the present time, the Rock Island, Lake Shore & Nickel Plate, and the Chicago & Indiana Southern and subsidiary companies.
Q. Were you occupied as a ticket agent there in the years, 1894 to 1904?
A. No, my time began as ticket agent in July, 1903.
551 Q. Do you know where the records are which would show the amount of that suburban travel over the suburban lines of those companies in and about Chicago for the years 1894 to 1904?
A. They are not available.
Q. What became of them, if you know?
A. I have no idea.
Q. You have no idea what has become of them?
A. No idea.
Q. Do you know who has an idea what has become of them; who would know?
A. No, probably for this reason, that during the construction of our new station there which was finished in July, 1903, we were running from the Grand Central station, and in the transfer of records and books and things there were a lot of them that we never did see afterwards. We do not know where they did go to.
Q. They were lost?
A. Yes, sir.

JOSEPH DONNESBERGER, called as a witness on behalf of plaintiff, in rebuttal, having been first duly sworn on oath, was examined in chief by Mr. Mecartney, and testified as follows:

Q. And how long have you been in the real estate business, in Chicago? Or upwards of how many years?
A. About forty four years.
Q. Were you the Joseph Donnesberger whose name has
552 been mentioned in connection with the Swift Commission?
A. Yes, sir.

Mr. Mecartney:

Q. Who was the *chrisman* of that commission?
A. I was.
Q. Will you state on what basis the valuations made by that commission and returned to the Mayor of the City of Chicago in 1869 were made?

Mr. Burns: I object.
The Court: Objection sustained.
Mr. Mecartney: Well, the counsel challenged me to call Mr. Donnesberger and I have done it. Exception.

HOWARD G. GRAY, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined in chief by Mr. Mecartney and testified as follows, in rebuttal:

Q. What is your business?
A. Real estate.
Q. How long have you been in that business?
A. Between twenty and thirty years.
Q. Did you have anything to do with the sale of the property fronting north on Van Buren street between Dearborn and Custom House Place from H. H. Kohlsaat to the trustees of the Simon Reed estate made in April, 1894?

Mr. Burns: I object to that.

553 The Court: He may answer.

Mr. Mecartney: Had you anything to do with that sale, or are you familiar with it?
A. I am familiar with it.
Q. Who did you represent in that transaction?

Mr. Burns: Oh, well, I object to that.
The Court: He may answer.
To which ruling of the Court, the defendants by their counsel then and there duly excepted.

The Witness: I was representing the trustees of the estate of Simon Reed, but not as the broker in the deal however.
Mr. Mecartney: You weren't, however, agent for them?
A. I was agent for them.
Q. Now, I am going to—that property is how much in Van Buren street, do you remember how much frontage there is on Van Buren street?
A. It fronts north on Van Buren, as I recall it, 66½ feet by 75 feet, from north to south.
Q. Running from where?
A. From Dearborn street on the east to Custom House Place on the west.
Q. How wide is Custome House place, or was it about?
A. I think forty feet.
Q. Now, I am going to ask you if you know the consideration in that sale?

554 Mr. Burns: Wait a minute, I object to that.
The Court: Well, has he got the papers here?
Mr. Mecartney: What is that?
The Court: Has he got the papers here?
Mr. Mecartney: He don't need them. He knows it. He was in the transaction and represented the purchaser. He don't have to prove the sale then——
Mr. Burns: I object to anything in relation to this sale for this reason——
The Court: He may answer. The subject matter is all right.
Mr. Burns: Exception.

To which ruling of the Court, the defendants by their counsel then and there duly excepted.

Mr. Mecartney: Do you know the consideration for that sale?
A. I do.
Q. Now, I am going to ask you what it is, or what was it?

Mr. Burns: I object.
The Court: He may answer.
Mr. Burns: Wait a minute, please. If the Court please, this is all part of their direct case.
The Court: No, this is a question that Mr. Kesner testified about.
Mr. Mecartney: Yes, Mr. Kesner.
Mr. Burns: Upon cross examination, they could have put in any sale that they wanted to, in their direct case, and there was
555 no limit to it. This is a mere matter of Mr. Kesner saying that he knew about it, but if they wanted to know more about it, they could have introduced it and looked it up and introduced this witness in their direct examination, but now, at this time, to bring in this testimony, after the testimony is all closed——
Mr. Mecartney: It is not closed.
Mr. Burns: I mean it is as far as your direct case is concerned, and as far as our direct testimony is, it is closed.
The Court: It is still within the discretion of the Court. He may answer.
Mr. Burns: Exception.
To which ruling of the Court, the defendants by their counsel then and there duly excepted.
Mr. Mecartney: You may answer.

A. If I recall the question it was what was the consideration?
Q. Yes, what was the consideration.
A. The consideration was $350,000.
Q. What kind of a building was on that premise-?
A. I have not finished my answer.
Q. Oh, I beg your pardon.
A. And an agreement on the part of Mr. Kohlsaat and——
Q. Go ahead.
A. To lease——

556 Mr. Burns: I object to that.
The Court: That in reference to the agreement will be sustained. The objection will be sustained to that.
Mr. Mecartney: All right.

Q. How big a building was that at that time?

Mr. Burns: I object to that.

Mr. Mecartney:

Q. What kind of a building?

The Court: He may answer.
To which ruling of the Court the defendants by their counsel then and there duly excepted.

A. An old three story brick building formerly known as the Reed Temple of Music.

Mr. Mecartney: That is all.

Cross-examination.

By Mr. Burns:

Q. This property fronts on three streets, does it?
A. It does.
Q. Just state to the Court what streets those were?
A. It has an east frontage on Dearborn street of 75 feet and a north frontage on Van Buren of 66¾ feet, and a west frontage on Custom House place to 75 feet.

Mr. Burns: That is all.

Redirect examination,

By Mr. Mecartney:

557 Q. Excuse me. Was the date I mentioned about the right date? As to the time of the sale?
A. The date shown on the books of account, real estate account which I looked up this morning before coming here is given as 1894.

FRANK V. NEWELL, recalled as a witness on behalf of the plaintiff, in rebuttal, having been previously sworn, was examined in chief by Mr. Mecartney, and testified as follows:

Q. Mr. Newell, it came out on the cross examination here, in one of the questions, you stated the cubic foot value of the McCoy Building and the reconstruction value on the same as of——

Mr. Burns: Wait a minute. I object to stating what the witness testified to—what his testimony was.
The Court: Yes.
Mr. Mecartney: Well, I don't know how to direct his attention to it.

Q. You gave figures in response to certain questions of 11 cents a cubic foot value in 1895 and 22 cents a cubic foot value in 1895, and I want to ask you if they are on the same basis or meant to be on a different basis. There is some confusion which arose here just at that point in the witness' testimony and Mr. Walker claimed that one statement contradicted the other, and I want him to explain that.

558 Mr. Burns: We went into that——
The Court: I think that is very clear. That is my judgment of it. What the witness said was this, and see whether I am mistaken or not. First, I understood the witness said it was 11 cents, and then he said it was 22 cents, but that he made it 11 cents, and in that way on account for the depreciation and the difference in the price of material and so forth. That is his statement, as I recall it from the witness stand.

Mr. Burns: Now, I object to any more testimony in relation to this, because it opens up the entire examination.

The Court: Yes, I think that is clear on the cross examination.

Mr. Mecartney: Well, if the Court please, I didn't understand the witness at all like the Court. I didn't understand him to say that, and that is just the reason——

Mr. Burns: Whatever it is, it is in the record. We have to cross examine to get at the facts in this case.

The Court: I don't see how it is competent, Mr. Mecartney, myself, to have him come in and explain it now. He has stated the fact that he considered it worth 11 cents a cubic foor and he said it was new;—it might have cost 22 cents new.

Mr. Mecartney: Under the ordinance.

The Court: Under the ordinance.

Mr. Mecartney: As it was required then, but Mr. Walker
559 later suggested a contradiction in the witness' testimony after he had been on the stand a day, and it is only fair to the witness; if there is any contradiction, it is only fair to the witness and me, and I claim there is not but——

Mr. Burns: That is a matter of argument. You can't bring the words out of this witness' mouth and have him argue the situation. What is the object of the cross examination? To show wherein the error of the witness lies, in relation to the statement. If we have anything in the record as to that, it should stand. If you wanted to call him at that time, to straighten it out——

The Court: I don't know the purpose, really, why you want him.

Mr. Mecartney: Mr. Walker claims when he left the stand, and it escaped my notice at the time, that this witness said it would cost 11 cents a cubic foot in 1895 to reproduce that building, and then later he said 22 cents, and Mr. Walker — to reproduce it according to the ordinances.

The Court: I recall he said it was worth 11 cents a cubic foot in 1895.

Q. Were you meant to be understood in your former examination——

The Court: I will let him repeat his testimony, but I don't want any question as to what he meant to be understood. I will sustain the objection to that.

560 Mr. Mecartney: I will put it in that way——

Q. Mr. Newell, what was your statement, as you made it, according to your recollection as to 11 cents a cubic foot in 1895 and 22 cents a cubic foot in 1895?

Mr. Burns: I object to it because the question now put is leading, and it goes into the whole subject and it necessarily involves a complete recross examination of the witness, and we have already cross examined him, and it is not rebuttal to any question before the Court.

The Court: Unless the testimony is here so that I can see it, I can't pass on that. Now if you want to, before the trial is con-

cluded, have this part of the testimony written up and show it to the Court, why, all right.

Mr. Mecartney: Now, Mr. Reporter, write up the last ten pages of Mr. Newell's testimony. I will excuse you from the stand.

The Court: We will hold the case open and recall him at that time.

Mr. Mecartney: All right. That is all.

The Court: If the case is closed, now, it will be closed for all intents and purposes, with the exception of this one question if you want to look it up, in regard to Mr. Newell. I will not now reopen it for any testimony in the case. When it is closed, there is still one question left open. The mere fact that the case will be delayed, I don't want any more testimony to come in by reason of that fact.

561 Mr. Mecartney: Now, I offer to read to the jury, as a matter of—under the head of judicial notice, and of which the Court will take judicial notice, the amount of bank clearances, and I am not going to state what they are before the City of Chicago, in 1894, and in 1900, and in 1905.

Mr. Burns: I object to that.

The Court: Objection sustained.

Mr. Mecartney: Now, I offer to read, under the same head, the value of the wholesale trade in Chicago in the year 1896 and 1905.

Mr. Burns: I object to that.

The Court: Do you mean you are going to read the figures which you have compiled?

Mr. Mecartney: I will read them to the Court, because you can refer to any public document, if they are allowed to go in——

The Court: I will sustain the objection.

Mr. Mecartney: The value of the produce of manufacturers also in 1897 and 1905.

Mr. Burns: I object to that.

The Court: Well, you object not only to the subject matter, but also to the reading of certain figures?

Mr. Burns: Both.

The Court: Yes. We don't know where they come from.

Mr. Burns: I don t know anything about them.

562 Mr. Mecartney: Those bank clearances are read from a report of the Chicago Clearing House.

Mr. Burns: I object to that.

The Court: Objection will be sustained both as to form and subject matter.

Mr. Mecartney: Certified to by the secretary, and I have the Secretary of the Clearing House here, I had him—and he has got to go back *and* 11 o'clock, and I want to close this case.

The Court: Then let it be sustained on the subject matter and not on the form. On the subject matter.

Mr. Mecartney: I offer to read from a public report in the Chicago Tribune of December 31, 1905——

The Court: Public Reports of what?

Mr. Mecartney: Public report in the Chicago Tribune. It is

a matter of judicial notice. That is the reason why I — of December 31st, 1898, as to this value of the wholesale trade, the value of the manufacturers' and bank deposits in Chicago, in the years 1896, 1900 and 1905.

Mr. Burns: I object to that both as to form and substance.

The Court: Objection sustained on both grounds.

Mr. Mecartney: The building department of the City of Chicago is closed today and was closed yesterday. I meant to offer the ordinances as to the limit on the height of building- which existed prior to 1902; the change in that ordinance in 1902 and the
563 subsequent change in 1905, all of which, we think, bears upon the question of pendencies in market values in the downtown district.

Mr. Burns: I object to that.

The Court: I don't see how that is material, Mr. Mecartney.

Mr. Mecartney: Well, one of the witnesses even admitted it was.

The Court: I think the question of the ordinances then should be pleaded. They have to be pleaded, don't they?

Mr. Mecartney: No, as an element that affected market values, that is all, you Honor.

The Court: Oh, I think if you get the ordinances here, I will consider whether I will let them go in later on.

Mr. Mecartney: Well, that closes my case then.

The Court: That matter will be left open.

Mr. Mecartney: All right. That and the Newell question.

The Court: Is that all?

Mr. Burns: That is all I know of. Mr. Walker is ill today, and he may have something in mind.

The Court: Well, there won't be any more testimony.

Mr. Burns: Well so far as I am personally concerned, I think that closes our case; but, as I say, he may want to suggest something.

The Court: Just step up here a moment, gentlemen.

(Consultation between Court and counsel out of the hearing of the Reporter.)

And thereupon at the close of all of the evidence in the
564 case counsel for plaintiff moved the court to exclude all testimony in the case offered by defendants for the purpose of showing an increase of market value by reason of alleged increase of travel brought to the premises in question or to its immediate neighborhood by said loop railroad, or by reason of alleged increased travel facilities furnished to the said premises, or to its immediate neighborhood by said railroad.

But the court denied and refused to allow the motion. To which ruling of the court Plaintiff by his counsel then and there excepted.

Thereupon, at the close of all the evidence the defendants again moved the court to instruct the jury to find the defendants not guilty, and handed to the court a written instruction in the following words:

"The jury are instructed to find the defendants not guilty."

But the Court overruled and denied said motion. And to which ruling the defendants by their counsel then and their excepted.

The above and foregoing was all the evidence offered or received in the said trial of this case.

Thereupon the plaintiff tendered to the court the following written instructions with the request that the court give each and all of them to the jury and to mark the same in each instance, "Given." viz.

565 The jury are instructed that the term "premises in question" in these instructions refers to the interest of the plaintiff therein, namely, the leasehold estate in Lots 21 and 22, and the "fee" estate in the East 25 feet of Lots 20 and 23, in Block 115, School Section Addition to Chicago.

The jury are instructed that the plaintiff is entitled to have the market value of his premises estimated upon the basis of his ownership of the 25 feet known as the Jenks property as owned and used in connection with his leasehold estate in the said Lots 21 and 22.

The court instructs the jury that whatever light and air and convenience of access and egress actually attached to the plaintiff's premises by reason of its abutting upon Van Buren street constituted in law an easement appurtenant to plaintiff's premises.

The jury are instructed that in determining whether or not plaintiff's property was damaged by the building of the structure in question in abutting street for elevated railroad purposes, they are to regard the structure and the use of the same for such purposes as permanent and perpetually to remain.

The jury are instructed that the constitution of this state provides that "private property shall not be taken or damaged for public use without just compensation." This action is brought by plaintiff for an alleged damage to the property of plaintiff arising from the construction, of the structure in the abutting street for elevated railroad purposes. Such damages in the eye of the law can only be a loss in the market value of the property arising from the said construction, for the purposes aforesaid. Whether the premises in question have in fact been so damaged is for the jury to find from the evidence, according to the method and within the limitations of other instructions given you.

566 The court instructs the jury that "benefits" and "Damages" spoken of in the instruction mean benefits and damages to the market value thereof, and that by the term "market value" of property, as used in these instructions, is meant the price at which the owner if desires of selling, would under ordinary circumstances surrounding the sales of property have sold the property for, and what a person desires as purchasers would have paid for it under the same circumstances.

The court instructs the jury that if they find from the evidence and under the instructions of the court that damages *occurred* to the premises in question from the building of the structure in question in the abutting street for elevated railroad purposes, and if they further find from the evidence that such structure was built for the

benefit and use of all of the defendant companies, then all of said defendants are liable for such damages.

The jury are instructed that in considering the question of whether the premises in question were or were not damaged by the construction of the structure in the abutting street for elevated railroad purposes, they are to exclude from consideration all benefit which accrued to the said premises or to the owners thereof by reason of improved travel facilities furnished by said elevated railroad.

The following instruction was tendered in the alternative that the court refused to give the preceding instruction as to the exclusion of improved travel facilities benefit.

The jury are instructed that the increase of value resulting from the growth of public improvements, such as the construction of railroads and the establishment of improved means of transit, accrues to the public benefit generally, and the general appreciation of property consequent upon such improvements belongs to the property owner; and that in the present action the jury cannot consider that element, if any such is shown by the evidence, in arriving at your verdict as to whether or not the plaintiff's property was damaged. But the jury are further instructed that if you find from the evidence that there were special and peculiar advantages, which accrued to the property in question from the building of the structure for elevated railroad purposes, from the particular location of stations or other special transit facilities, you are to consider the same and give due weight thereto in connection with all other facts and circumstances and elements of benefit or damage as shown by the evidence.

567 The following instruction was tendered in the alternative that the court refused to give the second preceding above instruction as to the exclusion of improved travel facilities benefit:

The jury are instructed that if you find from the evidence that the premises in question were damaged by the construction of the elevated railroad in the street on which said premises abut, and find from the evidence the amount of such damage, the burden of showing any offset to or reduction of the amount of such damage by reason of market benefit from travel facilities furnished by the so-called "Loop" railroad to the premises in question is upon the defendant.

The court instructs the jury that if you find from the evidence and under the instructions of the court that plaintiff's property was damaged, you should in making up your verdict consider the lapse of time which has occurred since the construction of said elevated railroad structure and include in your verdict a sum equal to 5 per cent. per annum upon the amount of said damages and to be reckoned from the time the same actually accrued.

The jury are instructed that in arriving at your verdict as to whether or not the premises in question were damaged by the construction of the elevated railroad, you are to consider only such elements of benefits or damages which in an appreciable degree are capable of estimation in dollars and cents, either singly or in

connection with other elements as shown by the evidence in the case.

The jury are instructed, that parties have a right to get together and buy their peace, by making concessions to each other; and any offer or proposition of settlement or unaccepted tender of settlement, if made for that purpose merely, will not be binding upon the party as an admission of the amount due or claimed at the time.

And thereupon at the same time the defendants tendered to the court the following written instructions withe the request that the court give each and all of them to the jury and mark the same in each instance "Given" viz:

568 The jury is instructed that in determining the issues in this case you should take into consideration all the evidence in the case and all the facts and circumstances given in evidence upon the trial, giving to the several parts of the evidence such weight as you think they are respectively entitled to; and, in determining the weight to be given to the testimony of the several witnesses, you should take into consideration their interest, if any is shown by the evidence, in the outcome of this suit, their conduct and demeanor while testifying, their apparent fairness or bias, if any such appeared, their appearance on the stand, the reasonableness of the evidence given by them, their knowledge or lack of knowledge concerning the things about which they testified, and all the facts and circumstances appearing in the evidence tending to corroborate or contradict their testimony.

569 The court instructs the jury as a matter of law that the right of action which a property owner has under the constitution and laws of the State of Illinois to recover damages which he may claim have accrued to his real estate because of the construction, maintenance and operation of a railroad in the street in front of his premises, accrues immediately upon the construction and putting in operation of such railroad, and that all damages to such premises, past, present and future, because of the construction, maintenance and operation of said railroad are recoverable in one action.

The court instructs the jury that in passing upon the question whether the property in question is or is not damaged by the construction, maintenance and operation of the defendants' railroad, you should consider, so far as the same appears from the evidence, all elements of such construction, maintenance and operation, if any, which are a damage to the property in question, and also all elements of such construction, maintenance and operation, if any, which are a special benefit to such property, and then considering all these elements together, determine what is the total effect of the construction, maintenance and operation of said railroad upon the fair, cash, market value of the property in question. Your verdict should be based upon the total or whole effect upon the property in question, as you find the same to be from the evidence, and not upon any partial effect.

The jury is instructed that if you believe from the evidence

that plaintiff's premises have been increased in their fair, cash, market value by the construction, maintenance and operation of defendants' said railroad, and if you also believe from the evidence that other property in the neighborhood of the plaintiff's premises not abutting upon the defendants' railroad have been likewise increased in their fair, cash, market value by the construction, maintenance and operation of said railroad, but to a greater extent than the plaintiff's said premises, you have no right from that fact to find that the plaintiff's premises have been damaged.

Special benefits are such benefits as are special or peculiar to a particular piece of property, and which beneficially affect its fair, cash, market value, as distinguished from those benefits which are common to the public at large, and which are termed general benefits; and you are instructed that in determining the effect of the construction, maintenance and operation of defendants' elevated railroad upon the fair, cash, market value of plaintiff's said premises, you are not to take into consideration any general benefits which you may believe from the evidence to have arisen out of the construction, maintenance and operation of said elevated railroad, but you should take into consideration special benefits, if any, shown by the evidence, to plaintiff's said premises from the construction, maintenance and operation of defendants' said elevated railroad.

570 The jury is instructed that if you believe from the evidence that the property of the plaintiff described in the declaration of this case was enhanced in its fair, cash, market value by reason of the construction, maintenance and operation of the elevated railroad of the defendant, such increase in market value is a special benefit to the property of the plaintiff and not a general benefit, notwithstanding you may believe from the evidence that the other property in the vicinity of plaintiff's property also was enhanced in fair, cash, market value to a greater or less degree by reason of the construction, maintenance and operation of defendants' said elevated railroad.

The Jury is instructed that, even though you should find from the evidence that the construction, maintenance and operation of said elevated railroad intercepts a portion of the light and air coming to the plaintiff's property, and the operation of trains over said elevated railroad is attended with noise, and even though you should find from the evidence that the construction, maintenance and operation of said elevated railroad has resulted in any other of the inconveniences in the plaintiff's declaration mentioned, still, if you believe from the evidence that notwithstanding these things, the said property of the plaintiff since the time of the putting in operation of the defendants' elevated railroad did not suffer and has never suffered any loss or injury in its fair, cash, market value by reason of the construction, maintenance and operation of said elevated railroad, the plaintiff cannot recover in this case, and your verdict for the defendant should be not guilty.

The court instructs the jury that this is an action brought by the plaintiff to recover all damages, past, present and future, to

his premises located on the north side of Van Buren street between La Salle and Clark streets in the City of Chicago, by reason of the construction, maintenance and operation of the elevated railroad of the defendant in Van Buren street. The word "damage" as used in this and other instructions in this case, is used in its ordinary and popular sense, and means "hurt, injury or loss of property," and is limited to loss to property and does not include damage to business or personal annoyance or inconvenience. Damage to property does not mean merely physical injury to the property, for property may be injured in a physical sense and yet it is not damaged in the sense in which the word is used in these instructions, unless there is as a result of the physical injury to the property a resulting loss or diminution in its fair. cash, market value.

571 The burden is upon the plaintiff to prove by a preponderance of the evidence in this case that damages, as above defined, have in fact resulted to the premises of the plaintiff in question as a certain result of the acts of the defendant in constructing, maintaining and operating its elevated railroad in Van Buren street, and if the jury believe from the evidence in this case that the plaintiff's premises were not damaged as herein defined; or if, after considering all the evidence, you cannot determine whether the construction, maintenance and operation of the elevated railroad of the defendants in Van Buren street has caused damage to the plaintiff's property, then and in either case you should find the defendants not guilty.

18.

The jury is instructed that the measure of damages in a case of this kind is the difference between the fair, cash market value of the premises with the elevated railroad constructed, maintained and operated in the street in front of it, and what the fair, cash, market value of said premises would have been had not said elevated railroad been so constructed, maintained and operated. If you believe from the evidence that the fair, cash, market value of the plaintiff's premises with the railroad constructed, maintained and operated in Van Buren street has not been diminished below what you believe from the evidence the fair, cash, market value of said premises would have been if the said elevated railroad had not been constructed, maintained and operated in said street, then said plaintiff's premises have not been damaged by the construction, maintenance and operation of defendants' elevated railroad, * * * even though you may believe from the evidence that the construction, maintenance and operation of said elevated railroad in Van Buren street has caused certain inconveniences and annoyances in the use of plaintiff's said premises.

The court instructs the jury that if any facts or circumstances have been admitted in evidence in this case which you believe from the evidence have detrimentally affected the fair, cash market or rental value of the premises in question in this case, and if you further believe from the evidence that such facts or circumstances exist independent of, and are not attributable to the con-

struction, maintenance and operation of defendants' elevated railroad, then you have no right to charge to the defendants any diminution in the fair, cash, market or rental value of plaintiff's premises which you believe from the evidence was due to such facts or circumstances.

572 The jury is instructed that it is alleged in the declaration of the plaintiff in this case that his property in question has been damaged cause of the construction, maintenance and operation of the elevated railroad of the defendant in Van Buren street. It is incumbent upon the plaintiff to prove the claim that said property has been damaged by a preponderance of the evidence, that is, the greater weight of the evidence. It is your duty to determine whether the evidence produced by the plaintiff outweighs that produced by the defendants, and if, after considering all the evidence in this case, you find that the plaintiff has failed to show by a preponderance, or greater weight of the evidence, that his property is damaged; if the evidence upon that question is equally balanced, or if the jury after considering all the evidence cannot tell from the evidence whether or not the plaintiff's property has been damaged, then the jury should find the defendant not guilty.

The jury is instructed that by the fair cash market value of the property is meant its value as determined by what it would sell for in the market for cash in the due course of business. This does not mean the price at which it would sell under special circumstances, but its value as sold in the market under ordinary circumstances for cash, and not on time, and assuming that the owner is willing and not compelled to sell and the purchaser is willing and under no compulsion to purchase. The test question in this case is:

What was the fair cash market value of the premises in question immediately before the construction and putting in operation of said elevated railroad, and how has that value affected by reason thereof?

The burden is on the plaintiff to establish by a preponderance of the evidence in this case the fact that the fair cash market value of the premises in question has been decreased from what it was immediately before the construction and putting in operation of said elevated railroad, and as a result thereof, and this must be shown by a preponderance of the evidence. If the plaintiff has failed to establish that fact by a preponderance of the evidence, then you should find the defendant not guilty.

573 The court instructs the jury as a matter of law that the right of action which a property owner has under the constitution and laws of the State of Illinois to recover damages which he may claim have accrued to his real estate because of the construction, maintenance and operation of a railroad in the street in front of his premises, accrues immediately upon the construction and putting in operation of such railroad, and that all damages to such premises, past, present and future, because of the construction, maintenance and operation of said railroad are recoverable in one action. But the jury is instructed that in considering the effect of the construction, maintenance and operation of defendants' elevated rail-

read upon the fair cash market value of the premises of the plaintiff in this case at the time the right of action for such damages accrued, as herein defined, you may take into consideration any evidence, if such there was, of any later increase or decrease in the value of plaintiff's property in connection with all the other facts and circumstances shown in evidence in this case.

The court instructs the jury that, while the constitution of this state provides that private property shall not be taken or damaged for public use without just compensation, the damages contemplated by that clause when applied to this case must be an actual diminution in the fair cash market value of the property in question caused by the construction, maintenance and operation of defendants' elevated railroad; and if the jury believe from the evidence in this case that the fair cash market value of the plaintiff's property has not been diminished by reason of the construction, maintenance and operation of said elevated railroad you should find the defendants not guilty.

The jury is instructed that the plaintiff cannot recover for mere personal inconvenience or discomfort to the occupants of the property in question, nor merely because of the defendants elevated railroad is constructed, maintained and operated in the street upon which said property abuts. The only acts of the defendant for which recovery can be had are such as result in a direct physical injury to the property itself, or in a material interference with the use of the property, injuriously affecting its fair cash market value. Unless you believe from the evidence that the defendant has been guilty of such acts and that such acts have injuriously and do injuriously affect the fair cash market value of said property, then you should find for the defendant not guilty. You have no right to consider any elements of damage which are merely conjectural or speculative, nor have you the right to consider such remote or inappreciable damages as the imagination can conjure up.

574 The court instructs the jury, as a matter of law, that although you may believe from the evidence in this case that the fair cash market value of the property in question was more before the railroad was constructed and put in operation than it was immediately thereafter, still the plaintiff cannot recover in this case because of that fact alone unless you believe from the evidence that the reduction in the fair cash value of the property was due to the construction, maintenance and operation of the elevated railroad.

If you believe from the evidence that there were causes other than the construction, maintenance and operation of the elevated railroad which caused such reduction, you cannot charge those causes to the elevated railroad.

The jury is instructed that this case is based on a claim of money damage to a leasehold in the following described premises:

Lots 21 and 22, Block 115, School Section Addition, Chicago, and the building thereon situated, and

Also the fee of the east 25 feet of Lots 20 and 23 said block 115, School Section Addition to Chicago, and the building thereon situated

growing out of the construction, maintenance and operation of the defendants' elevated railroad in Van Buren street. Such claim is purely a matter of dollars and cents, although you may believe from the evidence in this case that there are annoyances and inconveniences at that point owing to the construction and operation of the elevated railroad in Van Buren street, yet if you further believe from the evidence that the fair cash market value of plaintiff's premises as above described was and continued to be as much or more after said elevated railroad in Van Buren street was constructed and put in operation, as they would have been had not said elevated railroad been constructed, maintained and operated, you should find the defendants not guilty.

The jury is instructed that plaintiff must prove by a preponderance of the evidence that damages have in fact resulted to their property as the certain result of the acts of the defendant in constructing, maintaining and operating its elevated railroad, and if, after considering all the evidence, you cannot determine whether or not the construction, maintenance and operation of the elevated railroad has caused damages to the plaintiff's property, then you should find the defendants not guilty.

The court instructs the jury, as a matter of law, that if from all the evidence in this case the plaintiff has failed to make out their case, or to show any damage to its said premises because of the construction, maintenance and operation of the said elevated railroad, by a preponderance or weight of the evidence; or if the jury, after summing up the evidence, cannot tell from the evidence whether the plaintiff's property is or is not damaged by the construction, maintenance and operation of said elevated railroad, then you should find the defendants not guilty.

575 The jury is instructed, As a matter of law, that in determining what the effect of the construction, maintenance and operation of defendants' elevated railroad upon the fair cash market value of the premises in question in this case, immediately after the putting in operation of said elevated railroad, the parties to this case have the right to prove any relevant facts or circumstances happening down to the time of the trial of this case, so far as such facts or circumstances tend to show what such effect was.

The jury is instructed that in determining the question of the effect of the construction, maintenance and operation of the defendant's elevated railroad upon the fair cash market and rental value of the plaintiff's premises you should consider the special benefits, if any are shown by the evidence, to the plaintiff's said premises from the construction, maintenance and operation of defendants' elevated railroad.

The Court instructs the jury that in determining the weight to be given to any particular sale or lease in evidence in this case you have the right to consider all the attendant facts and circumstances shown in evidence, affecting such sale or lease, together with all other facts and circumstances shown in evidence in this case, and therefrom to determine what value such sale or lease has as evidence of the market value of the premises in question in this case.

The jury is instructed that if you believe from the evidence that the plaintiff's said property has been increased in its fair cash market value as the effect of the construction, maintenance and operation of defendants' elevated railroad in question, then under the law said property has been specially benefited, notwithstanding the fact, if you find it to be from the evidence a fact, that other property in the vicinity of plaintiff's property has also been increased in market value from the same cause. Such benefits, so far as they apply to plaintiff's property, are special benefits to that property, and are not merely such general benefits as are common to the public at large, and the jury must consider such special benefits, if any, shown by the evidence, that accrue to the plaintiff's property by reason of the construction, maintenance and operation of defendants' elevated railroad in connection with the elements of damage, if any, shown by the evidence, from the construction, maintenance and operation of said elevated railroad; and, if after considering such special benefits in connection with such elements of damage, you find that no damages have in fact resulted to the fair cash market value of plaintiff's said property, then you should find the defendant not guilty.

576 The court instructs the jury that although you may believe from a preponderance of the evidence in this case that the elevated railroad structure in Van Buren street, owned by the defendants, of and by itself was detrimental to the plaintiff's property; that it was an obstruction to light and air coming to plaintiff's property; that the defendant created or increased noise or caused annoyance in front of plaintiff's property; yet, if the jury further believe from the evidence that the operation of defendants' trains in front of plaintiff's property and its establishment of depots for the taking on and letting off of passengers in close proximity to the plaintiff's property were beneficial to the market value of plaintiff's property, and that, when all the facts and circumstances are taken into consideration in relation to the construction, maintenance and operation of said elevated railroad in Van Buren street, the total effect of such construction, maintenance and operation did not result in a diminution in the fair cash market value of the plaintiff's property, then the jury should find the defendants not guilty.

577 But the Court refused some of the said instructions so tendered and asked for on the part of plaintiff and modified others thereof and also refused some of the said instructions tendered and asked for on part of defendants and modified others thereof and gave to the jury the following instructions and them only.

The first two No.'s 1 & 2 and No.'s 19 & 20 being given of the court motion, viz:

1.

578 The jury are instructed that neither by these instructions nor by any words uttered or remarks made by the court during this trial does or did the court intimate, or mean to give, or wish to be understood as giving, an opinion as to what the proof

is, or what it is not, or what are the facts in this case, or what are not the facts therein (Given.)

2.

579 The jury are instructed that they, the jury, are the sole judges of the questions of fact in this case, and they should determine the same from the evidence in the case. The law of the case as contained in the instructions given by the court to the jury should be applied by the jury to the facts of the case as the jury shall find such facts from the evidence, but the court does not mean by any instruction given the jury to tell them at what conclusion they shall arrive as to any fact in the case, the finding of the facts being exclusively within the province of the jury. The jury should not be influenced in the slightest degree as to the facts in the case by any assertion or statement of counsel on either side of the case, unless the same is sustained by evidence in the case. (Given.)

3.

The jury is instructed that in determining the issues in this case you should take into consideration all the evidence in the case and all the facts and circumstances given in evidence upon the trial, giving to the several parts of the evidence such weight as you think they are respectively entitled to; and, in determining the weight to be given to the testimony of the several witnesses, you should take into consideration their interest, if any is shown by the evidence, in the outcome of this suit, their conduct and demeanor while testifying, their apparent fairness or bias, if any such
580 appeared, their appearance on the stand, the reasonableness of the evidence given by them, their knowledge or lack of knowledge concerning the things about which they testified, and all the facts and circumstances appearing in the evidence tending to corroborate or contradict their testimony. (Given.)

4.

The court instructs the jury that benefits and damages spoken of in these instructions mean benefits and damages to the fair cash market value thereof and that by the term fair cash market value of the property as used in these instructions is meant its value as determined by what it would sell for in the market for cash in the due course of business. This does not mean the price at which it would sell under special circumstances, but its value as sold in the market under ordinary circumstances for cash, and not on time, and assuming that the owner is willing and not compelled to sell and the purchaser is willing and under no compulsion to purchase. (Given.)

5.

The jury are instructed that the term "premises in question" in these instructions refers to the interest of the plaintiff therein,

namely, the leasehold estate in Lots 21 and 22, and the "fee" estate in the East 25 feet of Lots 20 and 23, in Block 115, School Section Addition to Chicago. (Given.)

581

6.

The jury are instructed that the plaintiff is entitled to have the market value of his premises estimated upon the basis of his ownership of the 25 feet known as the Jenks property as owned and used in connection with his leasehold estate in the said Lots 21 and 22. (Given.)

7.

The court instructs the jury that whatever light and air and convenience of access and egress actually attached to the plaintiff's premises by reason of its abutting upon Van Buren street constituted in law an easement appurtenant to plaintiff's premises. (Given.)

8.

The jury are instructed that in determining whether or not plaintiff's property was damaged by the construction, maintenance and operation of the structure in question in the abutting street for elevated railroad purposes, they are to regard the structure and the use of the same for such purposes as permanent and perpetually to remain. (Given.)

9.

The court instructs the jury that if they find from the evidence and under the instructions of the court that damages occurred to the premises in question from the construction, maintenance
582 and operation of the structure in question in the abutting street for elevated railroad purposes, and if they further find from the evidence that such structure was built for the benefit and use of all of the defendant companies, then all of said defendants are liable for such damages. (Given.)

10.

The jury are instructed that the constitution of this state provides that "private property shall not be taken or damaged for public use without just compensation." This action is brought by plaintiff for an alleged damage to the property of plaintiff arising from the construction, maintenance and operation of the structure in the abutting street for elevated railroad purposes. Such damages in the eye of the law can only be a loss in the market value of the property arising from the said construction, maintenance and operation for the purposes aforesaid. Whether the premises in question have in fact been so damaged is for the jury to find from the evidence, according to the method and within the limitations of other instructions given you. (Given.)

11.

The court instructs the jury as a matter of law that the right of action which a property owner has under the constitution and laws of the State of Illinois to recover damages which he may claim have accrued to his real estate because of the construction,
583 maintenance and operation of a railroad in the street in front of his premises, accrues immediately upon the construction and putting in operation of such railroad, and that all damages to such premises, past, present and future, because of the construction, maintenance and operation of said railroad are recoverable in one action. (Given.)

12.

The court instructs the jury that in passing upon the question whether the property in question is or is not damaged by the construction, maintenance and operation of the defendants' railroad, you should consider, so far as the same appears from the evidence, all elements of such construction, maintenance and operation, if any, which are a damage to the property in question, and also all elements of such construction, maintenance and operation, if any, which are a special benefit to such property, and then considering all these elements together, determine what is the total effect of the construction, maintenance and operation of said railroad upon the fair, cash market value of the property in question. Your verdict should be based upon the total or whole effect upon the property in question, as you find the same to be from the evidence, and not upon any partial effect. (Given.)

13.

The jury is instructed that if you believe from the evidence that plaintiff's premises have been increased in their fair, cash,
584 market value by the construction, maintenance and operation of defendants' said railroad, and if you also believe from the evidence that other property in the neighborhood of the plaintiff's premises not abutting upon the defendants' railroad have been likewise increased in their fair, cash, market value by the construction, maintenance and operation of said railroad, but to a greater extent than the plaintiff's said premises, you have no right from that fact to find that the plaintiff's premises have been damaged. (Given.)

14.

Special benefits are such benefits as are special or peculiar to a particular piece of property, and which beneficially affect its fair, cash, market value, as distinguished from those benefits which are common to the public at large, and which are termed general benefits; and you are instructed that in determining the effect of the construction, maintenance and operation of defendants' elevated railroad upon the fair, cash, market value of plaintiff's said prem-

ises, you are not to take into consideration any general benefits which you may believe from the evidence to have arisen out of the construction, maintenance and operation of said elevated railroad, but you should take into consideration special benefits, if any, shown by the evidence, to plaintiff's said premises from the construction, maintenance and operation of defendants' said elevated railroad. (Given.)

585 15.

The jury is instructed that if you believe from the evidence that the property of the plaintiff described in the declaration of this case was enhanced in its fair, cash, market value by reason of the construction, maintenance and operation of the elevated railroad of the defendant, such increase in market value is a special benefit to the property of the plaintiff and not a general benefit, notwithstanding you may believe from the evidence that the other property in the vicinity of plaintiff's property also was enhanced in fair, cash, market value to a greater or less degree by reason of the construction, maintenance and operation of defendants' said elevated railroad. (Given.)

16.

The jury is instructed that, even though you should find from the evidence that the construction, maintenance and operation of said elevated railroad intercepts a portion of the light and air coming to the plaintiff's property, and the operation of trains over said elevated railroad is attended with noise, and even though you should find from the evidence that the construction, maintenance and operation of said elevated railroad has resulted in any other of the inconveniences in the plaintiff's declaration mentioned, still, if you believe from the evidence that notwithstanding these things, the said property of the plaintiff since the time of the putting in operation of the defendants' elevated railroad did not suffer and has never suffered any loss or injury in its fair, cash, market
586 value by reason of the construction, maintenance and operation of said elevated railroad, the plaintiff cannot recover in this case, and your verdict for the defendant- should be not guilty. (Given.)

17.

The court instructs the jury that this is an action brought by the plaintiff to recover all damages, past, present and future, to his premises located on the north side of Van Buren street between La Salle and Clark streets in the City of Chicago, by reason of the construction, maintenance and operation of the elevated railroad of the defendant in Van Buren street. The word "damage" as used in this and other instructions in this case, is used in its ordinary and popular sense, and means "hurt, injury or loss of property," and is limited to loss to property and does not include damage to business or personal annoyance or inconvenience. Damage to property does not mean merely physical injury to the property, for property may be

injured in a physical sense and yet it is not damaged in the sense in which the word is used in these instructions, unless there is as a result of the physical injury to the property a resulting loss or diminution in its fair, cash, market value. (Given.)

18.

The jury is instructed that the measure of damages in a case of this kind is the difference between the fair, cash, market value of the premises with the elevated railroad constructed, maintained
587 and operated in the street in front of it, and what the fair, cash, market value of said premises would have been had not said elevated railroad been so constructed, maintained and operated. If you believe from the evidence that the fair cash, market value of the plaintiff's premises with the railroad constructed, maintained and operated in Van Buren street has not been diminished below what you believe from the evidence the fair, cash, market value of said premises would have been if the said elevated railroad had not been constructed, maintained and operated in said street, then said plaintiff's premises have not been damaged by the construction, maintenance and operation of defendants' elevated railroad. (Given.)

19.

The jury are instructed that neither damages nor benefits must be presumed, but must be proven. The mere fact that the railroad structure was placed and put in operation in the abutting street does not of itself prove that damage occurred to the premises in question without other facts or circumstances to support an inference of damage. So, too, the mere fact that elevated railroad stations were placed near to and in the neighborhood of said premises does not of itself prove that the benefit occurred to the same by reason thereof, without other facts or circumstances to support an inference of benefit. (Given.)

588 20.

The jury are instructed that in ascertaining the effect of the construction, maintenance and operation of said elevated railroad upon the fair, cash, market value of plaintiff's property, the same must be considered and estimated as of October, 1897, when the said elevated railroad was completed and put in actual operation. (Given.)

21.

The court instructs the jury that if any facts or circumstances have been admitted in evidence in this case which you believe from the evidence have detrimentally affected the fair, cash, market or rental value of the premises in question in this case, and if you further believe from the evidence that such facts or circumstances exist independent of, and are not attributable to the construction, maintenance and operation of defendants' elevated railroad, then you have no right to charge to the defendants any diminution in the fair,

cash, market or rental value of plaintiff's premises which you believe from the evidence was due to such facts or circumstances. (Given.)

22.

The jury is instructed that it is alleged in the declaration of the plaintiff in this case that his property in question has been damaged because of the construction, maintenance and operation of the
589 elevated railroad of the defendant in Van Buren street. It is incumbent upon the plaintiff to prove the claim that said property has been damaged by a preponderance of the evidence, that is the greater weight of the evidence. It is your duty to determine whether the evidence produced by the plaintiff outweighs that produced by the defendants, and if, after considering all the evidence in this case, you find that the plaintiff has failed to show by a preponderance, or greater weight of the evidence, that his property is damaged; if the evidence upon that question is equally balanced, or if the jury after considering all the evidence cannot tell from the evidence whether or not the plaintiff's property has been damaged, then the jury should find the defendant not guilty. (Given.)

23.

The jury are instructed that if you find from the evidence and under the instructions of the court that plaintiff's property was damaged and that he is entitled to recover herein, you should in making up your verdict consider the lapse of time which has occurred since the construction of said elevated railroad structure and include in your verdict a sum equal to 5 per cent. per annum upon the amount of whatever you find from the evidence plaintiff is entitled to recover as damages to be reckoned from the time the same actually accrued. (Given.)

590 The following instructions of those tendered as above showing by the parties the court refused to give to the jury and marked the same "refused."

1.

* * * even though you may believe from the evidence that the construction, maintenance and operation of said elevated railroad in Van Buren street has caused certain inconveniences and annoyances in the use of paintiff's said premises.

"Refused as part of an instruction."

2.

* * * the burden is upon the plaintiff to prove by a preponderance of the evidence in this case that damages, as above defined, have in fact resulted to the premises of the plaintiff in question as a certain result of the acts of the defendant in constructing, maintaining and operating its elevated railroad in Van Buren street, and if the jury believe from the evidence in this case that the

plaintiff's premises were not damaged as herein defined; or if, after considering all the evidence, you cannot determine whether the construction, maintenance and operation of the elevated railroad of the defendants in Van Buren street has caused damage to the plaintiff's property, then and in either case you should find the defendants not guilty.

"Refused as part of an instruction."

3.

591 The jury are instructed that the constitution of this state provides that "private property shall not be taken or damaged for public use without just compensation." This action is brought by plaintiff for an alleged damage to the property of plaintiff arising from the construction of the structure in the abutting street for elevated railroad purposes. Such damages in the eye of the law can only be a loss in the market value of the property arising from the said construction for the purposes aforesaid. Whether the premises in question have in fact been so damaged is for the jury to find from the evidence, according to the method and with the limitations of other instructions given you.

"Refused but given haec verba, save for the addition of the term 'construction, maintenance and operation' of the road."

4.

The court instructs the jury that if they find from the evidence and under the instructions of the court thta damages *occurred* to the premises in question from the building of the structure in question in the abutting street for elevated railroad purposes, and if they further find from the evidence that such structure was built for the benefit and use of all of the defendant companies, then all of said defendants are liable for such damages.

"Refused, but given in identical form, save using the term 'construction, maintenance and operation, of the road."

591½ 5.

The jury are instructed that in determining whether or not plaintiff's property was damaged by the building of the structure in question in the abutting street for elevated railroad purposes, they are to regard the structure and the use of the same for such purpose as permanent and perpetually to remain.

"Refused, but given in identical form, save using the term 'construction, maintenance and operation' of the structure."

6.

The jury are instructed, that parties have a right to get together and buy their peace, by making concessions to each other; and any offer or proposition of settlement or unaccepted tender of settlement

if made for that purpose merely, will be binding upon the party as an admission of the amount due or claimed at the time.

7.

The jury are instructed that in considering the question of whether the premises in question were or were not damaged by the construction of the structure in the abutting street for elevated railroad purposes, they are to exclude from consideration all benefit which accrued to the said premises or to the owners thereof by reason of improved travel facilities furnished by said elevated railroad.

592

8.

The jury are instructed that the increase of value resulting from the growth of public improvements, such as the construction of railroads and the establishment of improved means of transit, accrues to the public benefit generally, and the general appreciation of property consequent upon such improvements belongs to the property owner; and that in the present action the jury cannot consider that element, if any such is shown by the evidence, in arriving at your verdict as to whether or not the plaintiff's property was damaged. But the jury are further instructed that if you find from the evidence that there were special and peculiar advantages, which accrued to the property in question from the building of the structure for elevated railroad purposes, from the particular location of stations or other special transit facilities, you are to consider the same and give due weight thereto in connection with all other facts and circumstances and elements of benefit or damage as shown by the evidence.

9.

The jury are instructed that if you find from the evidence that the premises in question were damaged by the construction of the elevated railroad in the street on which said premises abut, and find from the evidence the amount of such damage, the burden of showing any offset to or reduction of the amount of such damage by reason of market benefit from travel facilities furnished by
593 the so-called "Loop" railroad to the premises in question is upon the defendant.

10.

The jury are instructed that in arriving at your verdict as to whether or not the premises in question were damaged by the construction of the elevated railroad, you are to consider only such elements of benefits or damages which in an appreciable degree are capable of estimation in dollars and cents, either singly or in connection with other elemets as shown by the evidence in the case.

11.

Special Question.

The jury are instructed to find specially upon the following question:

What do you find to have been the market effect from the construction of the railroad structure in Van Buren street for elevated railroad purposes, independently of any market effect from improved travel facilities furnished by the so-called "Loop" railroad?

If you find such effect to have been damaging, what was the amount of such damage?

12.

The Jury is Instructed That by the fair cash market value of the property is meant its value as determined by what it
594 would sell for in the market for cash in the due course of business. This does not mean the price at which it would sell under special circumstances, but its value as sold in the market under ordinary circumstances for cash, and not on time, and assuming that the owner is willing and not compelled to sell and the purchaser is willing and under no compulsion to purchase. The test question in this case is:

What was the fair cash market value of the premises in question immediately before the construction and putting in operation of said elevated railroad, and how was that value affected by reason thereof?

The burden is on the plaintiff to establish by a preponderance of the evidence in this case the fact that the fair cash market value of the premises in question has been decreased from what it was immediately before the construction and putting in operation of said elevated railroad, and as a result thereof, and this must be shown by a preponderance of the evidence. If the plaintiff has failed to establish that fact by a preponderance of the evidence, then you should find the defendant not guilty.

"Refused, but given partially."

13.

The Court Instructs the Jury as a matter of law that the right of action which a property owner has under the constitution and laws of the State of Illinois to recover damages which he may claim have accrued to his real estate because of the construction,
595 maintenance and operation of a railroad in the street in front of his premises, accrues immediately upon the construction and putting in operation of such railroad, and that all damages to such premises, past, present and future, because of the construction, maintenance and operation of said railroad are recoverable in one action. But the jury is instructed that in considering the effect of the construction, maintenance and operation of defendants' elevated railroad upon the fair cash market value of the premises of the plaintiff in this case at the time the

right of action for such damages accrued, as herein defined, you may take into consideration any evidence, if such there was, of any later increase or decrease in the value of plaintiff's property in connection with all the other facts and circumstances shown in evidence in this case.

"Refused as a whole. Part given and balance refused as repetition."

14.

The Court Instructs the Jury That, while the constitution of this state provides that private property shall not be taken or damaged for public use without just compensation, the damages contemplated by that clause when applied to this case must be an actual diminution in the fair cash market value of the property in question caused by the construction, maintenance and operation of defendants' elevated railroad; and if the jury believe from the evidence in this case that the fair cash market value of the plaintiff's property
596 has not been diminished by reason of the construction, maintenance and operation of said elevated railroad you should find the defendants not guilty.

"Refused because of repetition."

15.

The jury is instructed that the plaintiff cannot recover for mere personal inconvenience or discomfort to the occupants of the property in question, nor merely because the defendants' elevated railroad is constructed, maintained and operated in the street upon which said property abuts. The only acts of the defendants for which recovery can be had are such as result in a direct physical injury to the property itself, or in a material interference with the use of the property, injuriously affecting its fair cash market value. Unless you believe from the evidence that the defendant has been guilty of such acts and that such acts have injuriously and do injuriously affect the fair cash market value of said property, then you should find the defendant not guilty. You have no right to consider any elements of damage which are merely conjectural or speculative, nor have you the right to consider such remote or inappreciable damages as the imagination can conjure up.

"Refused because of repetition."

597 16.

The court instructs the jury, as a matter of law, that although you may believe from the evidence in this case that the fair cash market value of the property in question was more before the railroad was constructed and put in operation than it was immediately thereafter, still the plaintiff cannot recover in this case because of that fact alone unless you believe from the evidence that the reduction in the fair cash value of the property was due to the construction, maintenance and operation of the elevated railroad. If you

believe from the evidence that there were causes other than the construction, maintenance and operation of the elevated railroad which caused such reduction, you cannot charge those causes to the elevated railroad.

"Refused because of repetition."

17.

The jury is instructed that this case is based on a claim of money damage to a leasehold in the following described premises:

Lots 21 and 22, block 115, School Section Addition, Chicago, and the building thereon situated, and

Also to the fee of the east 25 feet of Lots 20 and 23 said block 115, School Section Addition to Chicago, and the building thereon situated

growing out of the construction, maintenance and operation of the defendants' elevated railroad in Van Buren street. Such claim is purely a matter of dollars and cents, although you may
598 believe from the evidence in this case that there are annoyances and inconveniences at that point owing to the construction, maintenance and operation of the elevated railroad in Van Buren street, yet if you further believe from the evidence that the fair cash market value of plaintiff's premises as above described was and continued to be as much or more after said elevated railroad in Van Buren street was constructed and put in operation, as they would have been had not said elevated railroad been constructed, maintained and operated, you should find the defendants not guilty.

"Refused because of repetition."

18.

The jury is instructed that plaintiff must prove by a preponderance of evidence that damages have in fact resulted to their property as the certain result of the acts of the defendant in constructing, maintaining and operating its elevated railroad, and if, after considering all the evidence, you cannot determine whether or not the construction, maintenance and operation of the elevated railroad has caused damage to the plaintiff's property, then you should find the defendants not guilty.

"Refused because of repetition."

19.

The court instructs the jury, as a matter of law, that if from all the evidence in this case the plaintiff has failed to make out *their* case, or to show any damages to its said premises be-
599 cause of the construction, maintenance and operation of the said elevated railroad, by a preponderance or weight of the evidence; or if the jury, after summing up the evidence, cannot tell from the evidence whether the plaintiff's property is or is not dam-

sed by the construction, maintenance and operation of said elevated railroad, then you should find the defendants not guilty.
"Refused because of repetition."

20.

The jury is instructed, as a matter of law, that in determining what was the effect of the construction, maintenance and operation of defendants' elevated railroad upon the fair cash market value of the premises in question in this case, immediately after the putting in operation of said elevated railroad, the parties to this case have the right to prove any relevant facts or circumstances happening down to the time of the trial of this case, so far as such facts or circumstances tend to show what such effect was.
"Refused because of repetition."

21.

The jury is instructed that in determining the question of the effect of the construction, maintenance and operation of the defendants' elevated railroad upon the fair cash market and rental value of the plaintiff's premises you should consider the special benefits, if any are shown by the evidence, to the plaintiff's said premises from the construction, maintenance and operation of defendants' elevated railroad.
"Refused because of repetition."

22.

The court instructs the jury that in determining the weight to be given to any particular sale or lease in evidence in this case you have the right to consider all the attendant facts and circumstances, shown in evidence, affecting such sale or lease, together with all other facts and circumstances shown in evidence in this case, and therefrom to determine what value such sale or lease has as evidence of the market value of the premises in question in this case.
"Refused because of repetition."

23.

The jury is instructed that if you believe from the evidence that the plaintiff's said property has been increased in its fair cash market value as the effect of the construction, maintenance and operation of defendants' elevated railroad in question, then under the law said property has been specially benefited, notwithstanding the fact, if you find it to be from the evidence a fact, that other property in the vicinity of plaintiff's property has also been increased in market value from the same cause. Such benefits, so far as they apply to plaintiff's property, are special benefits to that property, and are not merely such general benefits as are common to the public at large, and the jury must consider such special benefits, if any, shown by the evidence, that accrue to the

plaintiff's property by reason of the construction, maintenance and operation of defendants' elevated railroad in connection with the elements of damage, if any, shown by the evidence, from the construction, maintenance and operation of said elevated railroad; and, if after considering such special benefits in connection with such elements of damage, you find that no damages have in fact resulted to the fair cash market value of plaintiff's said property, then you should find the defendant not guilty.

"Refused because of repetition."

24.

The court instructs the jury that although you may believe from a preponderance of the evidence in this case that the elevated railroads structure in Van Buren street, owned by the defendants, of and by itself was detrimental to the plaintiff's property; that it was an obstruction to light and air coming to plaintiff's property; that the defendant created or increased noise or caused annoyance in front of plaintiff's property; yet, if the jury further believes from the evidence that the operation of defendants' trains in front of plaintiff's property and its establishment of depots for the taking on and letting off of passengers in close proximity to the plain-
602 tiff's property were beneficial to the market value of plaintiff's property, and that, when all the facts and circumstances are taken into consideration in relation to the construction, maintenance and operation of said elevated railroad in Van Buren street, the total effect of such construction, maintenance and operation did not result in a diminution in the fair cash market value of the plaintiff's property, then the jury should find the defendants not guilty.

"Refused because of repetition."

603 To which ruling and action of the court in refusing to give each of said instructions so tendered and asked for on the part of the plaintiff, the plaintiff by his counsel then and there duly excepted in each instance and then and there duly excepted in each instance to the court's refusing and marking refused the said instructions tendered and asked for on the part of the plaintiff, in each instance, which are numbered in the refused instructions respectively Nos. 3, 4, 5, 6, 7, 8, 9, and 10.

And to which ruling and action of the court in modifying some of the instructions so tendered and asked for on the part of plaintiff, and to such ruling and action respecting each of such modifications, the plaintiff by his counsel then and there duly excepted.

And to which ruling and action of the court in giving said instructions Nos. 1, 2, 19 and 20 of the given instructions on the court's own motion, and in giving each of said instructions, the plaintiff by his counsel then and there duly excepted.

And to which ruling and action of the court in giving said instructions and each of them so tendered and asked for on the part of the defendant, the plaintiff by his counsel then and there duly excepted.

And the plaintiff by his counsel then and there duly excepted in each instance to the giving by the court of the said instructions tendered by Defendants viz: Nos. 3, 4, Nos. 11, 12, 13, 14, 15, 16, 17, 18 and 21 of the given instructions.

And thereupon plaintiff requested the court to require the jury to find specially upon the following question, which was then and there submitted to the court by the plaintiff and in the following form (copy of said special question and in such form having been submitted to the counsel for defendants before the commencement of the arguments to the jury, and having also then been present to the court), viz:

Special Question.

The jury are instructed to find specially upon the following questions:

What do you find to have been the market affect from the construction of the railroad structure in Van Buren Street for elevated railroad purposes, independently of any market effect from improved travel facilities furnished by the so-called "Loop" railroad?

If you find such effect to have been damaging, what was the amount of such damage?

But the Court declined to submit such question to the jury and denied the said request of plaintiff.

To which ruling of the court the plaintiff by his counsel then and there duly excepted.

And thereupon and thereafter the jury returned its verdict in said cause finding the defendants not guilty.

And thereupon and then and there the plaintiff entered his motion for a new trial and filed a written motion in writing in words and figures following, to-wit:

Motion for New Trial.

Now comes plaintiff in the above and foregoing suit, by Harry S. Mecartney, his attorney, and moves the court to set aside the verdict heretofore and lately rendered in the said cause, and to grant a new trial therein.

And in support of said motion said plaintiff here sets forth and shows to the court the following grounds, viz:

The court erred:

1. In excluding over the objection of plaintiff relevant, material and competent evidence offered by plaintiff.

2. In admitting over the objection of plaintiff irrelevant, immaterial and incompetent evidence offered by defendants.

The court erred:

3. In excluding over the objection of plaintiff the following among other items of evidence offered by plaintiff, viz:

(a) The court so wrongfully sustained the objection of defendants to the questions put to the witness McCoy as to the rental value of the rooms on the second, third and other floors on the

south side of the hotel premises in question before and after the construction of the elevated railroad, and the prices charged and received for such rooms before and after the construction of the railroad in question.

(*b*) The court erroneously sustained the objection to the question put to the witness Newell as to what had been the effect of the construction of the railroad in question for elevated railroad purposes upon the said premises, and particularly upon the rental value thereof, and declined to allow the said witness Newell to estimate the said effect in dollars and cents upon said rental value.

(*c*) In declining to allow said witness Newell to explain the basis of his estimate of rental value and in striking out his answer of "40 cents per day per room."

607 (*d*) In sustaining objection to the question put to said witness Newell, tending to elicit his estimate of the effect upon the market value of said premises upon the basis of his estimate of the building and upon the hypothesis of an assumed estimate of the ground given by plaintiff's witness Knott and others, or supported by their testimony.

(*e*) In sustaining objections to the question put to the witness Byrnes, Clerk of the Chicago Clearing House, in reference to the amount of bank clearings and bank deposits of Chicago banks for a series of years prior to the completion and putting in operation of the elevated road structure and for a series of years immediately thereafter.

(*f*) In ruling out evidence as to the amount of wholesale trade of Chicago for a series of years prior to the completion and putting in operation of the elevated road structure and a series of years immediately thereafter.

(*g*) In ruling out evidence as to the amount or volume of manufactures of Chicago for a series of years prior to the completion and putting in operation of the elevated road structure and a series of years immediately thereafter.

(*h*) In ruling out evidence of the amount of street or surface car line railway passengers in Chicago for the year 1898 and other years.

(*i*) In ruling out evidence as to the comparative effect on public travel in the City of Chicago arising from general financial or business depression and from financial or business prosperity, as per questions put to the witness Sikes.

608 (*j*) In ruling out other evidence as to the general condition of the "Loop" railroad and travel thereon and the congested state of the travel thereon in the year 1902.

(*k*) In ruling out evidence as to the advance in value of property on parallel streets, viz.: Jackson and Adams Streets within the Loop after 1897.

(*l*) In ruling out evidence of the market benefit conferred by the Loop upon property in the City of Chicago generally and outside of and beyond the so-called "central" or "down town" district.

(*m*) In ruling out evidence offered by plaintiff (1) as to the

cost of the building of the "Loop" railroad structure and (2) as to the effect upon the market value of the premises in question if a subway railroad had been constructed in its place or if other styles of structure or equipment had been used.

(n) In ruling out evidence on plaintiff's re-direct examination of the witness Knott as to the "Swift Commission" report of values and the basis thereof.

(o) In ruling out evidence tendered by plaintiff on rebuttal as to the basis of values of the "Swift Commission" report and in sustaining defendant's objection to the question put to the witness Donnersberger as to such basis of valuation.

The court erred:

4. In admitting the following items of evidence offered by defendants over the objection of plaintiff, viz:

(a) In allowing defendants' witnesses over the objection of plaintiff to estimate or attempt to estimate the market effect of the "Loop" railroad as an entirety, and by reason of its furnishing alleged increase of travel or travel facilities to the premises
600 in question and to property generally in the neighborhood.

(b) In allowing such estimates

(1) For several years prior to the completion and putting in operation of said roads, and

(2) For the years 1898 to 1905, after the putting in operation of said "Loop" railroad.

(c) In allowing witnesses of defendants—and in allowing the witness Knott over objection of plaintiff on cross-examination—to estimate the value of the premises in question or alleged increase thereof during the several years 1898 to 1905, or during any portion of such period.

(d) In receiving over objections of plaintiff evidence as to alleged market benefit occurring to the premises in question and to plaintiff's interest therein by reason of improved travel facilities furnished by said "Loop" railroad.

(e) In receiving evidence of the number of passengers who paid fare at the station immediately west of the premises in question for a portion of the year 1897 after said Loop railroad had been put in operation, and for the various years 1898 to 1905, and each of said years, and at other stations on such "Loop" railroad for the same period of years.

(f) In allowing evidence offered by defendants of the total amount or number of revenue passengers of all the elevated road systems in Chicago for a portion of the years 1897, after the said "Loop" railroad was put in operation, and for the various years 1898 to 1905 inclusive.

610 (g) In admitting over the objection of plaintiff, evidence as to the long term ground lease in 1905 of the Mendel property adjoining the premises in question on the west; and also of the lease and sale of the Eisendrath property in 1903 and 1905.

The Court erred:

5. In denying the motion of the plaintiff at the close of defendants' evidence, and also at the close of all the evidence, to exclude

all testimony in the case offered by defendants for the purpose of showing, and which it was claimed tended to show, an increase of market value by reason of alleged increase of travel brought to the premises in question or to its immediate neighborhood by the said "Loop" railroad, or by reason of alleged increase of travel facilities furnished to the said premises or to its immediate neighborhood by said railroad.

6. In declining to submit to the jury the special question submitted by plaintiff as to the market effect on the premises in question, independent of any market effect from improved travel facilities, which is marked No. 11 of "Refused" instructions.

7. In denying the several motions of plaintiff to strike out the evidence in the case given on the part of defendants.

The court erred:

8. In giving to the jury Instructions Nos. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of the "Given" instructions, and in giving each of them. The said instructions, given in behalf of the defendants and also given by the court of its own motion, are each and all and as an entirety prolix, confusing,

611 repetitions, and unduly emphasize features of the evidence and of the law which were favorable to the defendants.

The Court erred:

9. In refusing the following instructions tendered by plaintiff, to wit: Nos. 3, 4, 5 and 6 of "Refused" instructions.

10. In refusing plaintiff's tendered instructions, being No. 7 of "Refused" instructions, directing the jury to exclude from consideration all market benefit which accrued to the said premises or to the owner thereof by reason of improved travel facilities furnished by said elevated railroad.

11. In refusing plaintiff's tendered instruction, being No. 8 of "Refused" instructions, in respect to the "general appreciation of property consequent upon such improvements," and as to "special and peculiar advantages which accrued to the property in question from the building of the structure for elevated railroad purposes."

12. In refusing plaintiff's tendered instruction, being No. 9 of "Refused" instructions, directing the jury "that the burden of showing any offset to or reduction of the amount" of such damage by reason of market benefit from travel facilities, etc., "is upon the defendants."

13. In refusing plaintiff's tendered instruction, being No. 10 of "Refused" instructions, as to the jury considering "only such elements of benefits or damages which in an appreciable degree are capable of estimation in dollars and cents," etc.

612 The court erred:

14. In its modification of plaintiff's tendered instructions and each of them.

15. Said verdict is against the evidence.

16. Said verdict is against the law.

17. Said verdict is against the law and the evidence.

The said verdict is, and each and all of the said defendants is

structions given by the court were and are, and any judgment rendered upon said verdict and against the plaintiff will be

18. Contrary "Sec. 2" of "Article II" of the Constitution of Illinois, providing that "No person shall be deprived of life, liberty or property without due process of law."

19. Also contrary to "Sec. 15" of "Article II" of the Constitution of Illinois, providing that "Private property shall not be taken or damaged for public use without just compensation."

20. Also contrary to "Sec. 14" of said "Article II," which provides that "No law * * * impairing the obligation of contracts * * * shall be passed."

21. Also contrary to "Sec. 10" of "Article I" of the Constitution of the United States, providing that "No state shall pass any * * * law impairing the obligation of contracts."

22. Also contrary to "Sec. 1" of the Fourteenth—"XIV"—Amendment to the Constitution of the United States, providing: "Nor shall any state deprive any person of life, liberty or property without due process of law."

613 23. Also contrary to the provision in said last quoted section which provides: "Nor shall any state * * * deny to any person within its jurisdiction the equal protection of the laws."

24. The court also denied plaintiff its said constitutional rights and each of them set out and specified in the preceding paragraphs numbered 18 to 23 in the following particulars, viz.:

(a) In denying the said motion of plaintiff at the close of evidence specified in paragraph No. 5 above.

(b) In declining to submit to the jury the special question mentioned in paragraph No. 6 above, and which was marked No. 11 of "Refused" instructions.

(c) In giving to the jury instructions numbered 12, 13, 14, 15, 16, 17, 18, 19 and 22 of the "Given" instructions, and in giving each of them.

(d) In refusing instructions tendered by the plaintiff, to wit: Nos. 3, 4, 5 and 6 of the "Refused" instructions, and in refusing each of said instructions.

(e) In refusing plaintiff's tendered instruction, being No. 7 of "Refused" instructions, directing the jury to exclude from consideration all market benefit which accrued to the said premises or to the owner thereof by reason of improved travel facilities furnished by said elevated railroad.

(f) In refusing plaintiff's tendered instructions, being No. 8 of "Refused" instructions, in respect to the "general appreciation of property consequent upon such improvement," and as to "special and peculiar advantages which accrued to the property in question from the building of the structure for elevated railroad purposes."

614 (g) In refusing plaintiff's tendered instruction, being No. 9 of "Refused" instructions, directing the jury "that the burden of showing any offset to or reduction of the amount" of such damage by reason of market benefit from travel facilities, etc., "is upon the defendants."

(*h*) In refusing plaintiff's tendered instruction, being No. 10 of "Refused" instructions, as to the jury considering "only such elements of benefits or damages which in an appreciable degree are capable of estimation in dollars and cents," etc.

Wherefore, plaintiff prays that the said verdict may be set aside and that the court grant a new trial in said cause.

HARRY S. MECARTNEY,
Attorney for Plaintiff.

615 And thereupon the court overruled plaintiff's said motion for new trial.

To which action of the court in overruling said motion, plaintiff by his counsel then and there duly excepted.

And thereupon the court entered judgment on the verdict, and adjudging the costs of said suit against the plaintiff, as appears by the record herein.

To which action of the court in entering the said judgment plaintiff by his counsel then and there duly excepted. The above and foregoing were all the proceedings upon the said trial of the case, and down to the entry of the judgment herein;

And thereupon the plaintiff prayed an appeal to the Supreme Court of Illinois, which was allowed by the court upon condition that the plaintiff file a good and sufficient appeal bond, conditioned according to law, and in the penal sum of Five Hundred Dollars ($500.00), the same to be filed within sixty days from March 4, 1914, and it was ordered that plaintiff be allowed to file a bill of exceptions in this cause within sixty days from said last named date.

And inasmuch as the matters and things herein set forth do not fully appear of record, the plaintiff tenders this, his bill of exceptions in said cause, and asks that the same may be signed and sealed by the judge and ordered made a part of the record in said cause, and all in accordance with the statute in such case made and provided which is done accordingly this 12th day of May, A. D. 1914.

HUGO PAM, *Judge.* [SEAL.]

Approved:

GARDNER, FOOTE & BURNS.

Presented for approval and signing May 7th, 1914.

HUGO PAM, *Judge.*

616 In the Supreme Court of Illinois, October Term, A. D. 1915.

No. 10242.

SERNETTA J. McCOY and JOHN R. CAVERLY, Executors of the Estate of William A. McCoy, Deceased, Plaintiffs in Error,

vs.

THE UNION ELEVATED RAILROAD COMPANY, THE LAKE STREET Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railroad Company, Defendant in Error.

Error to Superior Court, Cook County.

Hon. Hugo Pam, Trial Judge.

Assignment of Errors.

Now come Sernetta J. McCoy and John R. Caverly, Executors of the Estate of William A. McCoy, deceased, plaintiffs in error herein, by Harry S. Mecartney, their attorney and counsel, and show to this Honorable Court that in the record and proceedings aforesaid and in the rendering of the judgment aforesaid there is manifest error and for cause in this behalf show to the court:

617 The said supreme court erred:

1. In excluding over the objection of plaintiff competent, relevant and material evidence offered by plaintiff.

2. In admitting over the objection of plaintiff incompetent irrelevant and immaterial evidence offered by defendants.

The court erred:

3. In excluding over the objection of the plaintiff the following among other items of evidence offered by plaintiff, viz.:

(*a*) The court so wrongfully sustained the objection of defendants to the questions put to the witness McCoy as to the rental value of the rooms on the second, third and other floors on the south side of the hotel premises in question before and after the construction of the elevated railroad, and the prices charged and received for such rooms before and after the construction of the railroad in question.

(*b*) The court erroneously sustained the objection to the question put to the witness Newell as to what had been the effect of the construction of the railroad in question for elevated railroad purposes upon the said premises, and particularly upon the rental value thereof, and declined to allow the said witness Newell to estimate the said effect in dollars and cents upon said rental value.

(*c*) In declining to allow said witness Newell to explain the basis of his estimate of rental value and in striking out his answers of "40 cents per day per room."

618 (*d*) In sustaining objection to the question put to said witness Newell, tending to elicit his estimate of the effect

upon the market value of said premises upon the basis of his estimate of the building and upon the hypothesis of an assumed estimate of the ground given by plaintiff's witness Knott and others, as supported by their testimony.

(e) In sustaining objections to the question put to the witness Byrnes, Clerk of the Chicago Clearing House, in reference to the amount of bank clearings and bank deposits of Chicago banks for a series of years prior to the completion and putting in operation of the elevated road structure and for a series of years immediately thereafter.

(f) In ruling out evidence as to the amount of wholesale trade of Chicago for a series of years prior to the completion and putting in operation of the elevated road structure and a series of years immediately thereafter.

(g) In ruling out evidence as to the amount of volume of manufactures of Chicago for a series of years prior to the completion and putting in operation of the elevated road structure and a series of years immediately thereafter.

(h) In ruling out evidence of the amount of street or surface car line railway passengers in Chicago for the year 1898 and other years.

(i) In ruling out evidence as to the comparative effect on public travel in the City of Chicago arising from general financial or business depression and from financial or business prosperity, as per questions put to the witness Sikes.

619 (j) In ruling out other evidence as to the general condition of the "Loop" railroad and travel thereon and the congested state of the travel thereon in the year 1902.

(k) In ruling out evidence as to the advance in value of property on parallel streets, viz.: Jackson and Adams streets within the Loop after 1897.

(l) In ruling out evidence of the market benefit conferred by the Loop upon property in the City of Chicago generally and outside of and beyond the so-called "central" or "down town" district.

(m) In ruling out evidence offered by plaintiff (1) as to the cost of the building of the "Loop" railroad structure and (2) as to the effect upon the market value of the premises in question if a subway railroad had been constructed in its place or if other style of structure or equipment had been used.

(n) In ruling out evidence on plaintiff's re-direct examination of the witness Knott as to the "Swift Commission" report of values and the basis thereof.

(o) In ruling out evidence tendered by plaintiff on rebuttal as to the basis of values of the "Swift Commission" report and in sustaining defendants' objection to the question put to the witness Donnersberger as to such basis of valuation.

The court erred:

4. In admitting the following items of evidence offered by defendants over the objection of plaintiff, viz.:

(a) In allowing defendants' witnesses over the objection
620 of plaintiff to estimate or attempt to estimate the market effect of the "Loop" railroad as an entirety, and by reason of its furnishing alleged increase of travel or travel facilities to the premises in question and the property generally in the neighborhood.

(b) In allowing such estimates.

(1) For several years prior to the completion and putting in operation of said roads, and

(2) For the years 1898 to 1905, after the putting in operation of said "Loop" railroad.

(c) In allowing witnesses of defendants—and in allowing the witness Knott over the objection of plaintiff on cross-examination—to estimate the value of the premises in question or alleged increase thereof during the several years 1898 to 1905, or during any portion of such period.

(d) In receiving over objections of plaintiff evidence as to alleged market benefit occurring to the premises in question and to plaintiff's interest therein by reason of improved travel facilities furnished by said "Loop" railroad.

(e) In receiving evidence of the number of passengers who paid fare at the station immediately west of the premises in question for a portion of the year 1897 after said Loop railroad had been put in operation, and for the various years 1898 to 1905, and each of said years, and at other stations on such "Loop" railroad for the same period of years.

(f) In allowing evidence offered by defendants of the total
621 amount or number of revenue passengers of all the elevated road systems in Chicago for a portion of the year 1897, after the said "Loop" railroad was put in operation, and for the various years 1898 to 1905 inclusive.

(g) In admitting over the objection of plaintiff, evidence as to the long term ground lease in 1905 of the Mendel property adjoining the premises in question on the west; and also of the lease and sale of the Eisendrath property in 1903 and 1905.

The court erred:

5. In denying the motion of the plaintiff at the close of defendants' evidence, and also at the close of all the evidence, to exclude all testimony in the case offered by defendants for the purpose of showing, and which it was claimed tended to show, an increase of market value by reason of alleged increase of travel brought to the premises in question or to its immediate neighborhood by the said "Loop" railroad, or by reason of alleged increase of travel facilities furnished to the said premises or to its immediate neighborhood by said railroad.

6. In declining to submit to the jury the special question submitted by plaintiff as to the market effect on the premises in question, independently of any market effect from improved travel facilities, which is marked No. 11 of "Refused" instructions.

7. In denying the several motions of plaintiff to strike out the evidence in the case given on the part of defendants.

The court erred:

8. In giving to the jury Instructions Nos. 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 of the
622 "Given" instructions, and in giving each of them. The said instructions, given on behalf of the defendants and also given by the court of its own motion, are each and all and as an entirety prolix, confusing, repetitions, and unduly emphasize features of the evidence and of the law which were favorable to the defendants.

The court erred:

9. In refusing the following instructions tendered by plaintiff, to-wit: Nos. 3, 4, 5 and 6 of "Refused" instructions.

10. In refusing plaintiff's tendered instruction, being No. 7 of "Refused" instructions, directing the jury to exclude from consideration all market benefit which accrued to the said premises or to the owner thereof by reason of improved travel facilities furnished by said elevated railroad.

11. In refusing plaintiff's tendered instruction, being No. 8 of "Refused" instructions, in respect to the "general appreciation of property consequent upon such improvements," and as to "special and peculiar advantages which accrued to the property in question from the building of the structure for elevated railroad purposes."

12. In refusing plaintiff's tendered instruction, being No. 9 of "Refused" instructions, directing the jury "that the burden of showing any offset to or reduction of the amount" of such damage by reason of market benefit from travel facilities, etc., "is upon the defendants."

13. In refusing plaintiff's tendered instruction, being No. 10 of "Refused" instructions, as to the jury considering "only
623 such elements of benefits or damages which in an appreciable degree are capable of estimation in dollars and cents," etc.

The court erred:

14. In its modification of plaintiff's tendered instructions and each of them.

15. Said verdict is against the evidence.

16. Said verdict is against the law.

17. Said verdict is against the law and the evidence.

The said verdict is, and each and all of the said defendants' instructions given by the court were and are, and the judgment rendered upon said verdict and against the plaintiff was

18. Contrary to "Sec. 2" of "Article II" of the Constitution of Illinois, providing that "No person shall be deprived of life, liberty or property without due process of law."

19. Also contrary to "Sec. 13" of "Article II" of the Constitution of Illinois, providing that "Private property shall not be taken or damaged for public use without just compensation."

20. Also contrary to "Sec. 14" of said "Article II," which provides that "No law * * * impairing the obligation of contracts * * * shall be passed."

21. Also contrary to "Sec. 10" of "Article I" of the Constitution

of the United States, providing that "No state shall pass any * * * law impairing the obligation of contracts."

22. Also contrary to "Sec. 1" of the Fourteenth—"XIV"
624 —Amendment to the Constitution of the United States, providing: "Nor shall any state deprive any person of life, liberty or property without due process of law."

23. Also contrary to the provision in said last quoted section which provides: "Nor shall any state * * * deny to any person within its jurisdiction the equal protection of the laws."

24. The court also denied plaintiff its said constitutional rights and each of them set out and specified in the preceding paragraphs numbered 18 to 23 in the following particulars, viz:

(*a*) In denying the said motion of plaintiff at the close of evidence specified in paragraph No. 5 above.

(*b*) In declining to submit to the jury the special question mentioned in paragraph No. 6 above, and which was marked No. 11 of "Refused" instructions.

(*c*) In giving to the jury instructions numbered 12, 13, 14, 15, 16, 17, 18, 19 and 22 of the "Given" instructions, and in giving each of them.

(*d*) In refusing instructions tendered by the plaintiff, to wit: Nos. 3, 4, 5 and 6 of the "Refused" instructions, and in refusing each of said instructions.

(*e*) In refusing plaintiff's tendered instruction, being No. 7 of "Refused" instructions, directing the jury to exclude from consideration all market benefit which accrued to the said premises or to the owner thereof by reason of improved travel facilities furnished by said elevated railroad.

625 (*f*) In refusing plaintiff's tendered instructions, being No. 8 of "Refused" instructions, in respect to the "general appreciation of property consequent upon such improvements," and as to "special and peculiar advantages which accrued to the property in question from the building of the structure for elevated railroad purposes."

(*g*) In refusing plaintiff's tendered instruction, being No. 9 of "Refused" instructions, directing the jury "that the burden of showing any offset to or reduction of the amount" of such damage by reason of market benefit from travel facilities, etc., "is upon the defendants."

(*h*) In refusing plaintiff's tendered instruction, being No. 10 of "Refused" instructions, as to the jury considering "only such elements of benefits or damages which in an appreciable degree are capable of estimation in dollars and cents," etc.

Wherefore, plaintiffs in error pray that the said judgment of the Superior Court may be reversed and that said court may be ordered to set aside the same and the verdict upon which the same was rendered, and that a new trial may be ordered in said cause, and that this cause may be remanded to the said Superior Court of Cook County for further proceedings according to law.

HARRY S. MECARTNEY,
For Plaintiffs in Error.

626 And afterwards, to-wit, on the 18th day of October, A. D. 1915, the same being one of the days of the said October term of said Supreme Court, the following proceedings were by said Court had and entered of record in the words and figures following, to-wit:

No. 10242.

SERNETTA J. McCOY et al., Plaintiffs in Error,
vs.
THE UNION ELEVATED RAILROAD COMPANY et al., Defendants in Error.

Error Superior Court Cook.

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that Plaintiffs in Error have filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said Defendants in Error having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause having been argued orally by Harry S. Mecartney and John S. Miller for plaintiffs in error and F. S. Walker and Edgar Foote for defendant in error, is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

627 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court, Begun and Held at Springfield, on Tuesday, the First Day of February, in the Year of Our Lord One Thousand Nine Hundred and Sixteen, within and for the State of Illinois.

Present: Chief Justice William M. Farmer, Justice James H. Cartwright, Justice Frank K. Dunn, Justice Charles C. Craig, Justice Orrin N. Carter, Justice George A. Cooke, Justice Warren W. Duncan; Patrick J. Lucey, Attorney General; Warren C. Murray, Marshal.

Attest:

CHARLES W. VAIL, *Clerk.*

Be it Remembered, That to-wit; on the 16th day of February, A. D. 1916, the same being one of the days of the said February term of said Supreme Court, certain proceedings were had in said Court and entered of record in the words and figures following, to-wit:

February 16th, A. D. 1916.

No. 10242.

SERNETTA J. McCOY and JOHN R. CAVERLY, Executors of the Estate of William A. McCoy, Deceased, Plaintiff in Error,

vs.

UNION ELEVATED RAILROAD COMPANY, NORTHWESTERN ELEVATED Railroad Company, South Side Elevated Railroad Company, Lake Street Elevated Railroad Company and the Metropolitan West Side Elevated Railway Company, Defendants in Error.

Error to Superior Court of Cook County.

And now on this day, this cause having been argued by counsel, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for Error, and now being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and that in that record there is no error:

Therefore, it is considered by the Court that the Judgment of the Superior Court aforesaid be affirmed in all things, and stand in full force and effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said Defendants in Error recover of and from the said Plaintiffs in Error costs by them in this behalf expended, to be taxed, and that they have execution therefor.

823 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court, Begun and Held at Springfield, on Tuesday, the First Day of February, in the Year of Our Lord One Thousand Nine Hundred and Sixteen, within and for the State of Illinois.

Present: Chief Justice William M. Farmer, Justice James H. Cartwright, Justice Frank K. Dunn, Justice Charles C. Craig, Justice Orrin N. Carter, Justice George A. Cooke, Justice Warren W. Duncan; Patrick J. Lucey, Attorney General; Warren C. Murray, Marshal.

Attest:
CHARLES W. VAIL, *Clerk.*

Be it Remembered, That afterward to-wit, on the 16th day of February, 1916, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

No. 10242.

SERNETTA J. McCOY et al., Plaintiff in Error,
vs.
UNION ELEVATED RAILROAD COMPANY et al., Defendants in Error.

Error Superior Court Cook.

629 Mr. JUSTICE COOKE delivered the opinion of the court:

On September 27, 1902, William A. McCoy brought an action on the case in the superior court of Cook county against the Union Elevated Railroad Company, the Lake Street Elevated Railroad Company, the South Side Elevated Railroad Company, the Northwestern Elevated Railroad Company and the Metropolitan West Side Elevated Railroad Company, the defendants in error, to recover damages alleged to have been occasioned to certain real estate by the construction of the elevated structure in Van Buren street, in the city of Chicago, and the operation of trains thereon by the defendant companies. A trial was had before a jury during the month of February, 1914, and resulted in a verdict finding the defendant companies not guilty, upon which judgment was rendered in favor of the defendants. McCoy having died subsequent to the rendition of the judgment, his executors have brought the record here for review by writ of error.

The real estate involved consists of lots 21 and 22 and the east twenty-five feet of lots 20 and 23, in block 115, in School Section addition to the city of Chicago. At the time of bringing suit and until some time during the year 1910 McCoy held a 99-year lease upon lots 21 and 22 which he had obtained during the years 1882 and 1883, the term of the lease beginning May 1, 1883. These two lots combined have a frontage of one hundred and eight feet on Van Buren street and ninety-five feet on Clark street. After obtaining the lease McCoy proceeded to erect upon the lots a seven-story and basement brick and stone building, which was completed about June 1, 1884. The ground floor of the building was divided into rooms appropriate for use as retail stores, barber shops, and the like. The remainder of the building was designed for use as a hotel, and McCoy used it as such, under the name of the McCoy Hotel, from the time the building was erected until some time during the year 1910, when he sold his interest in the premises. Shortly after the erection of the hotel building by McCoy the owner of the twenty-five feet adjoining this property on the west, being the east twenty-five feet of lots 20 and 23, constructed thereon a seven-story and basement building corresponding in height and general plan of construction with the McCoy building. In 1887 McCoy purchased this twenty-five feet, with the building thereon, for $100,000, and thereafter used the rooms above the ground floor in connection with

and as a part of the McCoy Hotel. Prior to 1897 three elevated railroad systems had been established in Chicago, with down-town terminals. The South Side system had its terminal at Congress street, on the alley between State street and Wabash avenue, about three blocks east and south from the premises in question; the Metropolitan system had its terminal on Franklin street between Van Buren and Jackson streets, about three blocks west and north from the premises in question; and the Lake Street system had its terminal at Lake street and Wabash avenue, about one-half mile east and one mile north from the premises in question. During the years 1896 and 1897 what is generally known as the "loop" was constructed, under authority conferred by ordinances of the city of Chicago, for the joint use of the three systems above mentioned and another elevated system then in course of construction. The loop consists of an elevated structure in the streets encircling the central portion of the business district of the city, upon which are laid tracks for the passage of the elevated trains of all of the defendant companies completely around the central portion of the business district. Before the construction of the loop the
630 elevated trains of the defendant companies stopped at their respective terminals. The structure forming the south side of the loop was placed in that portion of Van Buren street extending from Wabash avenue on the east to Fifth avenue on the west, Clark street being one of the streets intersecting Van Buren street between these two avenues. Stations to permit passengers to board and leave the elevated trains were established at intervals around the loop and stairways were constructed leading from each station to the surface of the street. One of these stations in Van Buren street was established at La Salle street, about one hundred feet west from the McCoy Hotel, and another was established at Dearborn street, about three hundred feet east from the hotel. The elevated structure in Van Buren street obstructed the passage of light to the store rooms in McCoy's building, and the noise from the passage of trains over the structure and the fact that passing trains were on a level with the windows of the second floor of the building rendered the rooms on the south side of the second and third floors of the building less desirable for hotel purposes. Large upright columns supporting the elevated structure were placed just inside the curb in front of the premises and rendered the premises less accessible from the street.

There is no material controversy over the facts in the case. The witnesses all agree that the matters above mentioned, when considered by themselves, would be detrimental to the premises. They also agree that there was a steady increase of from five to ten per cent per year in the value of the premises from the construction of the loop until 1905. It also appears from the evidence that the rents from the store rooms on the ground floor constantly increased after 1897. The plaintiff called but one real estate expert as a witness. He testified that the damages to the property from the construction of the elevated structure, and the operation of the trains thereon, amounted to $81,999, being fifteen per cent of the value

which the witness placed upon the interest of McCoy in the pre
ises. He admitted that there had been a continuous increase in
value of the premises since the completion of the loop, and th
a portion of that increase, which he said it was impossible to
mate, was due to the increased travel brought to the premises
the elevated railroad, but that he did not take that into consid
tion in fixing the damages. The real estate experts called by
defendants, on the other hand, testified that at least one-half
the increase in the value of the premises was due to the increas
travel in front of the premises resulting from the operation
the elevated railroad in Van Buren street as a part of the loo
In support of the testimony of these witnesses defendants prov
that the number of persons boarding the elevated trains at
La Salle street station, in Van Buren street, during the thr
months of the year 1897 in which trains were operated around
loop, was 161,763, and that the number constantly increased
in 1905 there were 3,659,583 persons who boarded the trains
that station. It was also shown that during the period in 18
above mentioned 194,904 persons boarded the elevated trains
the Dearborn street station, in Van Buren street, and that the nu
ber constantly increased each year until in 1905 there were 2,55
976 persons who boarded the trains at that station.

The contention made by plaintiffs in error upon which mos
the assignments of error depend is, that the benefits to the premi
by reason of the increased travel in front of the premises resulti
from the operation of the elevated railroad in Van Buren str
as a part of the loop cannot be considered in determining whet
the premises have been damaged by the construction of the eleva
structure and the operation of trains thereon, first, because su
benefits are general benefits, common to all the property in
vicinity; and second, because such benefits are conjectu
631 and speculative. The same contention was made in Bra
v. Union Elevated Railroad Co. 258 Ill. 133, Geohegan
Union Elevated Railroad Co. 258 id. 352, and Geohegan v. Uni
Elevated Railroad Co. 260 id. 482, and in each of those cases
held that such benefits should be considered in determining whet
premises abutting on a public street have been damaged by th
construction and operation of an elevated railroad in such stre
The reasons for such holding were fully set forth in the opini
filed in the cases above mentioned and it would serve no use
purpose to repeat them here. It is sufficient to say that we adh
to the views expressed in the former cases involving the sa
question as is here presented.

The constitutional objections urged are all based on the con
tion that the rule announced in Metropolitan West Side Eleva
Railway Co. v. Stickney, 150 Ill. 362, which was followed in
Brand and Geohegan cases, supra, was not in accordance with
former decisions of this court upon the question of setting
benefits against damages. The decisions upon this question pre
ing the Stickney case were considered in the Brand case, sup
and it was there determined that the rule announced in the Stick

was in harmony with all the prior decisions of this court except one. We have again examined the cases cited by plaintiffs in error in support of their contention and are satisfied with the conclusion reached in the Brand case upon this question.

The plaintiff called as a witness in his behalf an architect, who testified that he had made a specialty of remodeling hotels; that the value of the McCoy Hotel building in 1895 and 1896, based upon his knowledge of the cost of constructing buildings during those years, was $126,000; that he was familiar with the rental value of hotels in Chicago during the same years, and that in his opinion the annual rental value of the McCoy Hotel building, exclusive of the store rooms, was about $33,000. He expressed the opinion that the hotel building was an appropriate improvement for the ground at that time, and stated that the elements which entered into the value of a building for hotel purposes were the absence of noise, the privacy of the rooms and the architectural beauty of the building. He was permitted to further express the opinion that the construction of the elevated railroad in front of the premises and putting the same into operation had a detrimental effect upon the market value of the premises for use as a hotel because the elevated structure marred the appearance of the building, the running of trains produced noise and the privacy of the rooms facing the structure was lessened. He was then asked to express an opinion as to the effect of the construction and operation of the elevated railroad on the rental value of the hotel premises in dollars and cents, but the court sustained an objection to the question. Plaintiffs in error contend that this action of the court was erroneous. The only issue before the jury was the effect of the construction and operation of the elevated railroad upon the market value of the premises. The question whether the rental value of the building for hotel purposes had been lessened was not involved, and the admission of such testimony would only have tended to confuse the jury. The evidence on the part of defendants in error tended to show that while the rooms facing the elevated structure on the second and third floors of the building were rendered less desirable for hotel purposes than they were before the erection of the structure, they were rendered more valuable for other purposes than they previously were for hotel purposes. This witness only qualified as an expert upon the rental value of buildings for hotel purposes, and the question necessarily called for his opinion regarding the rental value of the McCoy building for hotel purposes. The rental value for such purposes might have been totally destroyed by the construction and operation of the elevated railroad while the market value of the premises might at the same time have been increased. The court did not err in refusing to permit proof to be made concerning the effect of the construction and operation of the elevated railroad upon the rental value of the premises for hotel purposes.

The same witness, having failed to qualify as an expert upon ground values, was asked to assume a ground value of $5000 per front foot on Van Buren street, or nearly $600,000 for the land,

(that being the value fixed by the real estate expert called by the plaintiff,) and give an estimate of the effect of the construction of the elevated railroad upon the market value of the premises for hotel purposes. The court properly sustained an objection to this question, as the question limited the estimate to the effect of the construction of the elevated railroad upon the market value of the premises for hotel purposes instead of the effect of the construction and operation of the railroad upon the market value generally.

Defendants in error were permitted, over the objection of plaintiff, to prove the constant increase in the market value of the McCoy premises from the construction of the elevated railroad in Van Buren street until 1905, a period of about eight years, and were also permitted to prove sales and long-term leases of other premises similarly situated, in the vicinity of the McCoy premises, during the same period. Plaintiffs in error contend that the court should have limited such evidence to a shorter period after the completion of the elevated railroad. In Geohegan v. Union Elevated Railroad Co. 266 Ill. 482, we said: "The rule is well established that evidence of the value of the property before and after the time when the damages are alleged to have been sustained is admissible, and the time within which such evidence shall be confined is a matter in the sound discretion of the trial court." In our judgment the trial court did not abuse its discretion in this case. The suit was begun in 1902, almost five years after the alleged cause of action accrued, and the trial was not had until February, 1914. While the jury were required to find whether or not the premises were damaged as of the date when the railroad was completed and put in actual operation, the beneficial effects from the construction and operation of the elevated railroad upon the property appeared with greater certainty when it was shown that there was a constant and continuous increase in the market value of this property, and of property similarly situated in that locality, for a period of eight years.

It is urged that the court erroneously excluded evidence offered by plaintiff by which it was sought to show certain elements which after the construction of the elevated railroad entered into the increase in the market value of the premises, viz., increase in the population of the city, increase in bank deposits, increase in wholesale trade and manufacturers and increase in street car travel in the city of Chicago. The only attempt to prove these matters was by a witness who stated that his testimony would be based upon data contained in certain reports made by others and as to the correctness of which the witness had no personal knowledge. The court did not err in rejecting this evidence, as it was hearsay.

Complaint is made of the action of the court in giving certain instructions on behalf of defendants in error and in refusing or modifying certain instructions submitted by complainant. Practically all of these instructions were considered by us in the Brand and Geohegan cases, supra, and the trial court, in passing upon the instructions in this case, followed our rulings in those cases. More

ever, the evidence in this case would not have sustained a verdict in favor of the plaintiff, and any error committed by the trial court in giving, refusing or modifying instructions was therefore harmless.

The judgment of the superior court is affirmed.

Judgment affirmed.

633 Mr. Justice CARTWRIGHT, dissenting:

My understanding of the law is, that if a corporation authorized to take or damage property for public use by the construction and use of the public work injures the property of the citizen for the use to which he has devoted his property it must pay the damage; that the corporation has no right to compel the owner to change the use to which his property is applied or meet his claim by showing that the property would not be damaged if devoted to some other use. The court has laid down that rule in various cases, and has frequently said that by any other rule the owner would not be compensated for his damage nor receive the just compensation to which he is entitled. In the case of St. Louis, Jerseyville and Springfield Railroad Co. v. Kirby, 104 Ill. 345, Kirby had devoted his farm land to a special use as a training track, and in reply to the objection that what the training track was worth to him was not the true measure of damage, the court replied: "Why not? It is said he cannot recover for damage to his business. That may be true in so far as his business does not consist in the use of the land. The value of land consists in its fitness for use, present or future, and before it can be taken for public use the owner must have just compensation. If he has adopted a peculiar mode of using that land by which he derives profit, and he is to be deprived of that use, justice requires that he be compensated for the loss. That loss is the loss to himself. It is the value which he has, and of which he is deprived, which must be made good by compensation." In Johnson v. Freeport and Mississippi River Railway Co. 111 Ill. 413, the court reversed the judgment of the trial court because of the refusal to allow proof that the property sought to be condemned had a special value above the general market value. The court quoted what was said in the Kirby case, with a statement that it was there held competent to show that the land proposed to be taken has a special value to the owner by reason of a special profitable use to which he has devoted it, and that he is entitled to compensation for the loss occasioned by deprivation of that special use. In Chicago and Northwestern Railway Co. v. Chicago and Evanston Railroad Co. 112 Ill. 589, the court again made the above quotation from the Kirby case, and held that the owner of property has a right to the value which his property has in view of the particular use of it which he has adopted. The court said that the owner of property is entitled, under the constitution, to whatever the property is worth to him and is not required to make any pecuniary sacrifices at all. In illustration of the justice and propriety of the rule adopted, the court supposed that the owner of a farm concludes to go into the dairy business and spends several thousand

dollars on his farm in preparing the necessary stalls and sheds and making suitable preparations for the handling of milk and converting it into butter and cheese. The court said it was very clear that when the farm was fitted up for that purpose it would have a special value to the owner that it would not have for mere farming purposes. The owner of the farm, under such circumstances, could not be required to change the use of his farm and the court would have no right to dictate to him that he should. In Hercules Iron Works v. Elgin, Joliet and Eastern Railway Co. 141 Ill. 491, the court again indorsed the doctrine of the previous cases that the recovery of damages must be upon the basis of the actual value taken from the owner; that it is the value which the owner has, and of which he is deprived, that must be made good to him. In Sanitary District v. Pittsburgh, Ft. Wayne and Chicago Railway Co. 216 Ill. 575, the court again stated the rule that where property, by reason of being applied to a particular use, has a special value to the owner, that value is to be ascertained and allowed as compensation; and in Freiberg v. South Side Elevated Rail-
634 road Co. 221 Ill. 508, the same doctrine was applied. These decisions, as I understand, have settled the law beyond controversy.

In this case William A. McCoy had a leasehold interest in lots upon which he had erected a building for use as a hotel, with a frontage of 108 feet on Van Buren street, and he owned in fee 25 feet on the west which was covered by his hotel, making a frontage of 133 feet on Van Buren street. An elevated railroad was built in Van Buren street, supported by large columns, rendering the premises less accessible from the street and obstructing the passage of light and air to the first story, and, the railroad being put in operation, the noise from the passing trains on a level with the windows of the second floor of the hotel rendered the rooms on the south side of the second and third floors practically unfit for hotel purposes. There was no controversy over the fact that the property was seriously injured and damaged for the purpose to which the owner had devoted it. To meet this undisputed evidence the court admitted evidence that the property would not have been damaged if McCoy had devoted it to some other use. The evidence was, that for the eight years after the damage was done the business of the road increased enormously, necessarily increasing the discomforts, annoyances and damage to the property for hotel purposes, but the witnesses said that the increased number of trains and passengers benefited the property for some other use. The plaintiff called as a witness an architect familiar with hotel buildings and their rental value, and after he had testified that the construction and operation of the elevated railroad in Van Buren street were a damage to the market value of the property for use as a hotel, the court sustained an objection to giving his judgment as to the amount of injury. The same witness being asked to give an estimate of the effect of construction and use of the elevated railroad on the market value of the premises for hotel purposes on the assumption of a gross value of a certain amount, the court sustained an objection. The

court, in the opinion adopted, sustains the rulings of the trial court, and holds that the question whether the rental value of the building for hotel purposes had been lessened was not involved; that the evidence on the part of the defendants tended to show that while the rooms facing the elevated structure on the second and third floors were damaged, they were rendered more valuable for other purposes than they previously were for hotel purposes; that the rental value for hotel purposes might have been totally destroyed by the construction and operation of the elevated railroad while the market value of the premises might at the same time have been increased, and that the court properly sustained the objection to the hypothetical question assuming a certain value of the land, because it related to the market value of the premises for hotel purposes. I do not agree with the opinion on that subject.

The trial court required witnesses to qualify as so-called experts on market values in order to enlighten the jury by opinions on that subject, which was contrary to the rule of law. The market value of real estate, where it can fairly be said to have a market value, is a fact to be proved as any other fact. It is not a question of art or science, and any person who is familiar with the land and has an opinion as to its value is competent to express that opinion. An expert is not required, but, where there is equal credibility, superior opportunity and intelligence would, of course, be entitled to the greater weight, and what weight is to be given to the opinion of a witness is for the jury. White v. Hermann, 51 Ill., 243; Keithsburg and Eastern Railroad Co. v. Henry, 79 id. 290; Pike v. City of Chicago, 155 id. 656; Johnson v. Freeport and Mississippi River Railway Co. supra.

636 In the Supreme Court of the United States.

SERETTA J. MCCOY and JOHN R. CAVERLY, as Executors of the Estate of William A. McCoy, Deceased, Plaintiffs in Error,
vs.
THE UNION ELEVATED RAILROAD COMPANY, THE LAKE STREET Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railroad Company, Defendants in Error.

Error to Supreme Court of Illinois.

Stipulation.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the foregoing portions of the record in this cause shall constitute the transcript of record on writ of error to the United States Supreme Court in this cause, lately sued out by said plaintiffs in error herein, Sernetta J. McCoy and

John R. Caverly, as Executors of the Estate of William A. McCoy, deceased.

JOHN S. MILLER,
HARRY S. MECARTNEY,
Attorneys for Plaintiffs in Error.
ADDISON L. GARDNER,
ROGER L. FOOTE,
RANDALL W. BURNS AND
FRANCIS W. WALKER,
Attorney- for Defendants in Error.

[Endorsed:] Gen. No. —, Term No. —. —— Court, Cook County. McCoy vs. Union Elevated R. R. Co. et al. Stipulation. Harry S. Mecartney, 137 S. La Salle Street, Chicago.

636 *Authentication of Record.*

SUPREME COURT,
State of Illinois, ss:

I, Charles W. Vail, Clerk of said Court, Do Hereby Certify that the foregoing is a complete transcript of the portions of the record in accordance with the foregoing Stipulation, in the case of Sernetta J. McCoy and John R. Caverly as Executors of the Estate of William A. McCoy, deceased, Plaintiffs in Error, vs. The Union Elevated Railroad Company, The Lake Street Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railroad Company, Defendants in Error, and also of the Opinion of the Court rendered therein as the same now appears on file in my office.

In Testimony Whereof I have hereunto set my hand and affixed the seal of the said Supreme Court, at Springfield, in said State, this 8th day of June, A. D. 1916.

[Seal Supreme Court, State of Illinois.]

CHARLES W. VAIL,
Clerk Supreme Court.

637 Be it remembered to-wit that on the 12th day of May, A. D. 1916, there was duly filed by plaintiffs in error, Sernetta J. McCoy and John R. Caverly, as Executors of the Estate of William A. McCoy, deceased, in the office of the Clerk of the Supreme Court of Illinois, a petition for writ of error with assignments of error from the Supreme Court of the United States to the Supreme Court of Illinois addressed to the Hon. William M. Farmer, Chief Justice of the Supreme Court of Illinois, with the endorsement by the said Chief Justice upon the said petition allowing said writ of error, which documents are in words and figures as follows, to-wit:

638 Filed May 12, '16. Chas. W. Vail, Clerk Supreme Court.

In the Supreme Court of Illinois, October Term, A. D. 1915.

No. 10242.

SERNETTA J. McCOY and JOHN R. CAVERLY, as Executors of the Estate of William A. McCoy, Deceased, Plaintiffs in Error,

vs.

THE UNION ELEVATED RAILROAD COMPANY, THE LAKE STREET Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railroad Company, Defendants in Error.

Error to Superior Court Cook County.

Honorable Hugo Pam, Trial Judge.

Petition for Writ of Error—Assignment of Errors and Prayer for Reversal.

Considering themselves aggrieved by the final decision of the Supreme Court of Illinois in rendering judgment against them in the above entitled cause, the said Sernetta J. McCoy and John R. Caverly, as Executors of the Estate of William A. McCoy, deceased, hereby pray a writ of error from the said decision and judgment to the United States Supreme Court and an order fixing the amount of the bond to be given in this behalf.

And the said Sernetta J. McCoy and John R. Caverly, as Executors of the Estate of William A. McCoy, deceased, plaintiffs in said suit and plaintiffs in error and petiaioners herein, assign the following errors in the record and proceedings of the said cause, viz:

639 1. The Supreme Court of Illinois erred in affirming the said judgment of the Superior Court of Cook County.

2. The said Supreme Court erred in not reversing the said judgment and in not remanding the said cause to the said Superior Court of Cook County for a re-trial on the merits thereof.

3. The said Supreme Court erred in deciding that the claim of damages to the property of plaintiffs was subject to an allowance of benefits, if any, arising from the elevated railroad or improvement in question, taken as a whole, or from the conveniences or facilities furnished thereby.

4. The said Supreme Court erred in not holding that Section 9 of the Eminent Domain Statute of Illinois, namely, Chapter 47 of the Revised Statutes of Illinois, constituted a guaranty against any such allowance for benefits from the said improvement or elevated railroad.

5. The said Supreme Court erred in denying the claim of plaintiffs in error that the said judgment of the Superior Court was an

impairment of contract and contrary to the "First" paragraph of "§10" of "Article 1" of the Constitution of the United States, providing that "No state * * * shall pass any * * * law impairing the obligation of contracts."

6. The said Supreme Court erred in denying the claim of plaintiffs in error that the said judgment of the Superior Court constituted a deprivation of the said property of plaintiffs in error without due process of law, contrary to "§1" of the Fourteenth—"XIV"—Amendment to said Constitution, which provides: "Nor shall any state deprive any person of life, liberty or property without
640 due process of law."

7. The said Supreme Court erred in denying the claim of plaintiffs in error that the said judgment of the Superior Court is in conflict with and contrary to the provision in said last quoted section which provides: "Nor shall any state * * * deny to any person within its jurisdiction the equal protection of the laws."

8. The said Supreme Court erred in denying the claim of plaintiffs in error that the said judgment of the Superior Court of Cook County was and is in conflict with each of the constitutional provisions set forth in the above assignments of error Numbers 5, 6, and 7.

9. The decision and judgment of the said Supreme Court and the said decision and judgment of the said Superior Court so affirmed, constitute (*a*) an impairment of the contract rights of plaintiffs in error as owners of the property, contrary to said "First" paragraph of "§ 10" of "Article I" of the Constitution of the United States; (*b*) a deprivation of plaintiffs in error of their said property without due process of law, contrary to said "§10" of the Fourteenth—"XIV"—Amendment to said Constitution; and (*c*) a denial to plaintiffs in error under said last named constitutional clause of "the equal protection of the laws."

10. The said decision and judgment of the said Supreme Court and the said decision and judgment of the said Superior Court so affirmed, constitute an infringement of the rights of the plaintiffs in error guaranteed to them by the Illinois Constitution, (*a*) under "§2" of "Article II" thereof, which provides that "no person shall be deprived of * * * property without due process of law"; (*b*) under "§13" of said "Article II," which provides that "private property shall not be taken or damaged for public use without
641 just compensation"; and (*c*) under "§14" of said "Article II," which provides that "no * * * law impairing the obligation of contracts * * * shall be passed."

11. The said Supreme Court also denied plaintiffs in error their said constitutional rights, and each of them, set out and specified in the preceding paragraphs numbered 5, 6, 7, and 8, in the following particulars:

(*a*) In not reversing said judgment on the ground that the said Superior Court erroneously denied the motion of the plaintiff at the close of defendants' evidence, and also at the close of all the evidence, to exclude all testimony in the case offered by defendants for the purpose of showing and which it was claimed tended to show a

increase of market value by reason of alleged increase of travel brought to the premises in question, or to its immediate neighborhood, by the said "Loop" railroad, or by reason of alleged increase of travel facilities furnished to the premises, or to its immediate neighborhood, by said railroad.

(*b*) In not reversing said judgment on the ground that the said Superior Court erroneously declined to submit to the jury the special question submitted by plaintiff as to the market effect on the premises in question, independently of any market effect from improved travel facilities, which is marked No. 11 of "Refused" instructions.

(*c*) In not reversing said judgment on the ground that the said Superior Court erroneously denied the several motions of plaintiff to strike out the evidence in the case given on the part of defendants.

(*d*) In not reversing said judgment on the ground that
642 the said Superior Court erroneously gave to the jury instructions numbered 12, 13, 14, 15, 16, 17, 18, 19, and 22 of the "Given" instructions, and each of them.

(*e*) In not reversing said judgment on the ground that the said Superior Court erroneously refused plaintiff's tendered instructions, being No. 7 of "Refused" instructions, directing the jury to exclude from consideration all market benefit which accrued to the premises or to the owner thereof by reason of improved travel facilities furnished by said elevated railroad.

(*f*) In not reversing said judgment on the ground that the said Superior Court erroneously refused plaintiff's tendered instructions, being No. 8 of "Refused" instructions, in respect to the "general appreciation of property consequent upon such improvements," and as to "special and peculiar advantages which accrued to the property in question from the building of the structure for elevated railroad purposes."

(*g*) In not reversing said judgment on the ground that the said Superior Court erroneously refused plaintiff's tendered instructions, being No. 9 of "Refused" instructions, directing the jury "that the burden of showing any offset to or reduction of the amount" of such damage by reason of market benefit from travel facilities, etc., "is upon the defendants."

(*h*) In not reversing said judgment on the ground that the said Superior Court erroneously refused plaintiff's tendered instructions, being No. 10 of "Refused" instructions, as to the jury considering "only such elements of benefits or damages which in an appre-
643 ciable degree are capable of estimation in dollars and cents," etc.

12. The said Supreme Court also denied plaintiffs in error their constitutional rights, and each of them, set out and specified in the preceding paragraphs hereof numbered 5, 6, 7, and 8, in the following particulars:

(*a*) In not reversing said judgment on the ground that the said Superior Court erroneously allowed defendants' witnesses to estimate or attempt to estimate the market effect of the "Loop" railroad as

an entirety, and by reason of its furnishing alleged increase of travel or travel facilities to the premises in question and to property generally in the neighborhood.

(*b*) In not reversing said judgment on the ground that the said Superior Court erroneously allowed such estimates.

(1) For several years prior to the completion and putting into operation of said roads, and

(2) For the years 1898 to 1905, after the putting into operation of said "Loop" railroad.

(*c*) In not reversing said judgment on the ground that the said Superior Court erroneously allowed witnesses of defendants—and allowed the witness Knott over objection of plaintiff on cross-examination—to estimate the value of the premises in question or alleged increase thereof during the several years 1898 to 1905, or during any portion of such period.

(*d*) In not reversing said judgment on the ground that the said Superior Court erroneously received evidence as to alleged market benefit occurring to the premises in question and to plain-
644 tiff's interest therein by reason of improved travel facilities furnished by said "Loop" railroad.

(*e*) In not reversing said judgment on the ground that the said Superior Court erroneously received evidence of the number of passengers who paid fare at the station immediately west of the premises in question for a portion of the year 1897 after said "Loop" railroad had been put in operation, and for the various years 1898 to 1905, and each of said years, and at other stations on such "Loop" railroad for the same period of years.

(*f*) In not reversing said judgment on the ground that the said Superior Court erroneously allowed evidence offered by defendants of the total amount or number of revenue passengers of all the elevated road systems in Chicago for a portion of the years 1897, after the said "Loop" railroad was put in operation, and for the various years 1898 to 1905 inclusive.

(*g*) In not reversing said judgment on the ground that said Superior Court erroneously admitted evidence as to the long term ground lease in 1905 of the Mendel property adjoining the premises in question on the west; and also of the lease and sale of the Eisendrath property in 1903 and 1905.

For which errors the said Sernetta J. McCoy and John R. Caverly, as Executors of the Estate of William A. McCoy, deceased, pray that the said judgment of the Supreme Court of Illinois rendered in the above cause on the 16th day of February, 1916, affirming the said judgment of the Superior Court of Cook County,
645 be reversed, and that a judgment be rendered in favor of the said plaintiffs in error, and for costs.

JOHN S. MILLER,
HARRY S. MECARTNEY,
Counsel for Sernetta J. McCoy and John R. Caverly, as Executors of the Estate of William A. McCoy, Deceased.

STATE OF ILLINOIS,
Supreme Court, ss:

Let the writ of error issue upon the execution of a bond by Sernetta J. McCoy and John R. Caverly, as Executors of the Estate of William A. McCoy, deceased, to The Union Elevated Railroad Company, The Lake Street Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railroad Company in the sum of Two Thousand Dollars ($2,000.00), with The American Surety Company of New York and John Milton Oliver as sureties.

WILLIAM M. FARMER,
Chief Justice, Supreme Court of Illinois.

Dated, April 26" 1916.

Filed May 12, '16. Chas. W. Vail, Clerk Supreme Court.

646 Be It Remembered that on the 12th day of May, A. D. 1916, there was duly filed in the office of the Clerk of the Supreme Court of Illinois, an original bond for writ of error from the Supreme Court of the United States to the Supreme Court of Illinois, a copy of which Bond is in words and figures as follows, to-wit:

647 Filed May 12, '16. Chas. W. Vail, Clerk Supreme Court.

Copy.

Bond on Writ of Error.

In the Supreme Court of the United States.

SERNETTA J. MCCOY and JOHN R. CAVERLY, as Executors of the Estate of William A. McCoy, Deceased, Plaintiffs in Error,
vs.
THE UNION ELEVATED RAILROAD COMPANY, THE LAKE STREET Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railroad Company, Defendants in Error.

Error to Supreme Court of Illinois.

Know all men by these presents, that we, Sernetta J. McCoy and John R. Caverly, as Executors of the Estate of William A. McCoy, deceased, of Cook County, Illinois, as principals, and American Surety Company of New York, a corporation, duly licensed to do business and execute surety bonds in the State of Illinois, and John Milton Oliver, of Cook County, Illinois, as sureties, are held and

firmly bound unto The Union Elevated Railroad Company, The Lake Street Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railroad Company, in the sum of Two Thousand Dollars ($2,000.00), to be paid to them, said obligees, and for the payment of which, well and truly to be made, we bind ourselves, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of March, A. D. 1916.

Whereas, the above named Sernetta J. McCoy and John
648 R. Caverly, as Executors of the Estate of William A. McCoy, deceased, plaintiffs in error, seek to prosecute their writ of error to the United States Supreme Court to reverse the judgment rendered in the above entitled cause by the Supreme Court of the State of Illinois.

Now therefore, the condition of the above obligation is such, that if the above named plaintiffs in error shall prosecute their said writ of error to effect and answer all costs and damages that may be adjudged if they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full force and effect.

SERNETTA J. McCOY, [SEAL.]
JOHN R. CAVERLY, [SEAL.]
As Executors of the Estate of William A. McCoy, Deceased.

[Seal American Surety Co.]

AMERICAN SURETY COMPANY
OF NEW YORK,
By J. L. MOEHLE,
Resident Vice-President.

Attest:
W. R. O'DONNELL,
Resident Ass't Secretary.

JOHN MILTON OLIVER. [SEAL.]

Witnesses to Signatures:
WALTER E. MOSS.

Filed May 12, '16. Chas. W. Vail, Clerk Supreme Court.

649 STATE OF ILLINOIS,
County of Cook, ss:

John Milton Oliver being duly sworn on oath deposes and says that he is of lawful age and is a citizen of the County of Cook and State of Illinois, and knows the contents of the foregoing instrument to which he has attached his name; that he is worth above the sum of Five Thousand Dollars ($5000.00) over and above all debts, liabilities, and exemptions.

JOHN MILTON OLIVER.

Subscribed and sworn to before me this 28th day of March, A. D. 1916.

[SEAL.] WALTER E. MOSS,
Notary Pubic, Cook County, Illinois.

The above bond approved and to operate as a supersedeas.

(Signed) WILLIAM M. FARMER,
Chief Justice of the Supreme Court of Illinois.

April 26th, 1916.

Filed May 12, '16. Chas. W. Vail, Clerk Supreme Court.

650 UNITED STATE OF AMERICA,
State of Illinois,
Office of Clerk of Supreme Court, ss:

Be it remembered that on the 12th day of May, A. D. 1916, there was duly filed in the office of the Clerk of the Supreme Court of Illinois, an original writ of error which is hereby attached and is in words and figures as follows, to-wit:

651 *Writ of Error.*

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judiciary of the Supreme Court of the State of Illinois, Greeting:

Because, in the record and proceedings, as also in the recommendation of the judgment of a plea which is in the said Supreme Court of the State of Illinois before you at the February Term 1916 thereof, being the highest court of law or equity of the said state in which such a decision could be had in the said suit, between Sarnetta J. McCoy and John R. Caverly, as Executors of the Estate of William A. McCoy, deceased, designated as plaintiffs and plaintiffs in error, and The Union Elevated Railroad Company, The Lake Street Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railroad Company, designated as defendants and defendants in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, said state, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of such their validity or wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty or statute of, or commission held under the United States, and the decision was against the title, right, privilege
652 or exemption specially set up or claimed under such clause of the said constitution, treaty, statute or commission; a

manifest error hath happened to the great damage of said plaintiffs and plaintiffs in error, Sernetta J. McCoy and John R. Caverly, as Executors of the Estate of William A. McCoy, deceased. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 12th day of May, in the year of our Lord One Thousand Nine Hundred and Sixteen.

[Seal of the District Court United States, Southern District Illinois.]

R. C. BROWN,
Clerk of the District Court of the United States for the Southern District of Illinois.

Allowed by:
WILLIAM M. FARMER,
Chief Justice of the Supreme Court of the State of Illinois.

Filed May 12, '16. Chas. W. Vail, Clerk Supreme Court.

653 STATE OF ILLINOIS,
Supreme Court, ss:

I, Charles W. Vail, Clerk of said court, do hereby certify that there was lodged with me as such Clerk on May 12th, 1916, in the matter of Sernetta J. McCoy and John R. Caverly, as Executors of the Estate of William A. McCoy, deceased, plaintiffs in error, vs. The Union Elevated Railroad Company, The Lake Street Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railroad Company:

1. The original bond, of which a copy is herein set forth.

2. Six copies of the writ of error as herein set forth—one for each defendant in error and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Springfield, Illinois, this 12th day of May, A. D. 1916.

[Seal of the Supreme Court of the State of Illinois.]

CHARLES W. VAIL,
Clerk of the Supreme Court of Illinois.

Filed May 12, '16. Chas. W. Vail, Clerk Supreme Court.

654 And on to-wit, the 12th day of May, A. D. 1916, a certain Citation showing due service on defendants in error was filed in the office of the Clerk of the Supreme Court, which Citation is as follows, to-wit:

655 *Citation.*

UNITED STATES OF AMERICA, ss:

The President of the United States to The Union Elevated Railroad Company, The Lake Street Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error, filed in the office of the Clerk of the Supreme Court of the State of Illinois, wherein Sernetta J. McCoy and John R. Caverly, as Executors of the Estate of William A. McCoy, deceased, are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf. Mr. B. H. Montgomery of Chicago is hereby authorized to serve this citation.

Witness the Chief Justice of the Supreme Court of the State of Illinois, this 26th day of April A. D. 1916.

WILLIAM M. FARMER,
Chief Justice of the Supreme Court of Illinois.

Attest:
CHARLES W. VAIL,
Clerk of the Supreme Court of Illinois.

Filed May 12, '16. Chas. W. Vail, Clerk Supreme Court.

656 CHICAGO, ILLINOIS, May 1, 1916.

I, Addison L. Gardner, attorney of record for the defendants in error in the above entitled cause, hereby acknowledge due service of the above citation, and enter appearance in the Supreme Court of the United States.

ADDISON L. GARDNER,
Attorney for Defendants in Error.

Service of Citation.

STATE OF ILLINOIS,
County of Cook, ss:

B. H. Montgomery being first duly sworn deposes and says that he served the within citation upon Addison L. Gardner, Esq., Francis

W. Walker, Esq., Randall W. Burns, Esq., and Roger L. Foote, Esq., counsel for the above named defendants in error, by delivering a true copy of said citation to each of them personally on the 1st day of May A. D. 1916.

B. H. MONTGOMERY.

Subscribed and sworn to before me this 1st day of May A. D. 1916.

[Seal Evangeline Stewart, Notary Public, Cook County, Ill.]

EVANGELINE STEWART,
Notary Public.

Filed May 12, '16. Chas. W. Vail, Clerk Supreme Court.

657 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of Illinois, ss:

In obedience to the commands of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the portions of the complete record and proceedings in accordance with the stipulation incorporated herein in the within entitled cause with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said Supreme Court of Illinois, in the City of Springfield, this 8th day of June, A. D. 1916.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHARLES W. VAIL,
Clerk Supreme Court of Illinois.

658 In the Supreme Court of the United States, October Term, A. D. 1916.

No. 522.

SERNETTA J. McCOY and JOHN R. CAVERLY, as Executors of the Estate of William A. McCoy, Deceased, Plaintiffs in Error,

vs.

THE UNION ELEVATED RAILROAD COMPANY, THE LAKE STREET Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railroad Company, Defendants in Error.

Error to Supreme Court of Illinois.

Stipulation.

It is hereby stipulated by and between counsel for the respective parties in the above entitled cause that for the purpose of the hearing of this cause in this court the entire record as filed may be printed.

JOHN S. MILLER,
HARRY S. MECARTNEY,
Attorney- for Plaintiffs in Error.
ADDISON L. GARDNER,
Attorney for Defendants in Error.

Chicago, June 30, 1916.

659 In the Supreme Court of the United States, October Term, A. D. 1916.

No. 522.

SERNETTA J. McCOY and JOHN R. CAVERLY, as Executors of the Estate of William A. McCoy, Deceased, Plaintiffs in Error,

vs.

THE UNION ELEVATED RAILROAD COMPANY, THE LAKE STREET Elevated Railroad Company, The South Side Elevated Railroad Company, The Northwestern Elevated Railroad Company, and The Metropolitan West Side Elevated Railroad Company, Defendants in Error.

Error to Supreme Court of Illinois.

To Addison L. Gardner, Esq., Attorney for Defendants in Error:

You are hereby notified, that the following is a statement of the points on which plaintiffs in error intend to rely upon the hearing of the above entitled cause, and that plaintiffs in error consider that the entire record filed with the clerk of the court is necessary

for a consideration of said points and said cause, and shall request the clerk to print the entire record herein.

Statement.

I.

Plaintiffs in error will claim that the Supreme Court of Illinois erred in affirming the said judgment of the Superior Court of Cook County, and in not remanding the said cause to the said Superior Court of Cook County for re-trial on the merits thereof, and
660 in deciding that the claim of damages to the property of plaintiffs in error was subject to an allowance of benefits, if any, arising from the elevated railroad or improvement in question, taken as a whole, or from the conveniences or facilities furnished thereby.

II.

That the said Supreme Court erred in not holding that Section 9 of the Eminent Domain Statute of Illinois, namely, Chapter 47 of the Revised Statutes of Illinois, constituted a guaranty against any such allowance for benefits from the said improvement or elevated railroad.

III.

The said Supreme Court erred:

(*a*) In denying the claim of plaintiffs in error that the said judgment of the Superior Court was an impairment of contract, as set forth in Assignments of Error No. 5.

(*b*) In denying the claim that said judgment constituted a deprivation of the property of plaintiffs in error without due process of law, as specified in Assignments of Error No. 6.

(*c*) In denying the claim that said judgment constituted a denial to plaintiffs in error of the equal protection of the laws, as set forth in Assignments of Error No. 7.

(*d*) In denying the claim that said judgment was in conflict with each and all of the constitutional provisions set forth and referred to hereinabove.

661 IV.

That the decision and judgment of the said Supreme Court and the decision and judgment of the said Superior Court so affirmed, constituted an impairment of the contract rights of plaintiffs in error and a deprivation of plaintiffs in error of their said property without due process of law, and a denial to plaintiffs in error of the equal protection of the law, as called for and assured under said constitutional provisions.

V.

That the said decision and judgment of the said Supreme Court and said decision and judgment of said Superior Court so affirmed, deprived plaintiffs in error of certain specified and guaranteed rights under the Constitution of Illinois referred to in Assignments of Error No. 10, and of each of said rights.

VI.

That the action of the said Supreme Court amounted to a denial of plaintiffs in error of said constitutional rights, as set out in Assignments of Error No. 11.

VII.

That the action of the said Supreme Court amounted to a denial of plaintiffs in error of said constitutional rights, as set out in Assignments of Error No. 12.

In consequence of which claims so made above, plaintiffs in error will claim and request that the said judgments of the Supreme
662 Court of Illinois and of the said Superior Court of Cook County be set aside and the said cause reversed.

JOHN S. MILLER,
HARRY S. MECARTNEY,
Attorneys for Plaintiffs in Error.

Received copy of the foregoing notice and statement of points, this 30th day of June, A. D. 1916.

ADDISON L. GARDNER,
Attorney for Defendants in Error.

663 [Endorsed:]522/25352. Gen. No. 522. Term No. —. Supreme Court of the United States. Sernetta J. McCoy, et al., Pl'ffs in Error, vs. Union Elevated R. R. Co., et al., Def'ts in Error. Stipulation. Notice & statement of points. Harry S. Mecartney, 137 S. La Salle Street, Chicago.

664 [Endorsed:] File No. 25352. Supreme Court U. S., October term, 1916. Term No. 522. Sernetta J. McCoy, et al., Pl'ffs in Error, vs. The Union Elevated Railroad Company, et al. Statement of points to be relied upon and stipulation that entire record be printed. Filed July 1, 1916.

Endorsed on cover: File No. 25,352. Illinois Supreme Court. Term No. 522. Sernetta J. McCoy and John R. Caverly, as Executors of the estate of William A. McCoy, deceased, plaintiff in error, vs. The Union Elevated Railroad Company, The Lake Street Elevated Railroad Company et al. Filed June 12th, 1916. File No. 25,352.

Office Supreme Court, U. S.
FILED
NOV 20 1916
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1916.

No. [redacted] 190

SERNETTA J. McCOY and JOHN R. CAVERLY, as Executors of the Estate of WILLIAM A. McCOY, deceased,
Plaintiffs in Error,
vs.
THE UNION ELEVATED RAILROAD COMPANY, THE LAKE STREET ELEVATED RAILROAD COMPANY, et al.,
Defendants in Error.

In Error to the Supreme Court of the State of Illinois.

MOTION TO ADVANCE.

JOHN S. MILLER,
HARRY S. MECARTNEY,
FOR PLAINTIFFS IN ERROR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1916.

No. 522.

SERNETTA J. McCOY and JOHN R. CAVERLY, as Executors of the Estate of WILLIAM A. McCOY, deceased,
Plaintiffs in Error,
vs.
THE UNION ELEVATED RAILROAD COMPANY, THE LAKE STREET ELEVATED RAILROAD COMPANY, et al.,
Defendants in Error.

In Error to the Supreme Court of the State of Illinois.

NOTICE OF MOTION.

To ADDISON L. GARDNER, ESQ.,
Attorney for Defendants in Error:

YOU ARE HEREBY NOTIFIED that on Monday, the 20th day of November, A. D. 1916, at the opening of court, or as soon thereafter as counsel can be heard, we shall present a motion to advance the above entitled cause and to set the same for argument and hearing upon a day certain at the earliest convenience of the court, copies of which motion and

affidavit upon which the same is based and suggestions in support thereof, as hereto annexed, are herewith served upon you, together with this notice.

JOHN S. MILLER,
HARRY S. MECARTNEY,
For Plaintiffs in Error.

Received copies of above notice, motion, affidavit, and suggestions referred to therein, and as annexed hereto, this 17th day of November, 1916.

ADDISON L. GARDNER,
For Defendants in Error.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1916.

No. 522.

Sernetta J. McCoy and John R. Caverly, as Executors of the Estate of William A. McCoy, deceased, *Plaintiffs in Error,* *vs.* The Union Elevated Railroad Company, the Lake Street Elevated Railroad Company, *et al.,* *Defendants in Error.*	In Error to the Supreme Court of the State of Illinois.

MOTION TO ADVANCE.

(With Affidavit and Suggestions in Support.)

And now come plaintiffs in error in above entitled cause and move the court to advance the said cause upon the hearing docket of this court and to set the said cause for argument at the earliest convenience of the court.

JOHN S. MILLER,
HARRY S. MECARTNEY,
For Plaintiffs in Error.

IN THE

SUPREME COURT OF THE UNITED STATES.

McCoy *et al.*,
Plaintiffs in Error,
vs.
Union Elev. R. R. Co., et al.,
Defendants in Error.
No. 522.

AFFIDAVIT OF HARRY S. MECARTNEY.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK, }

HARRY S. MECARTNEY, being duly sworn, deposes and says that he is one of the counsel for plaintiffs in error in the above and foregoing cause of *McCoy* v. *Union Elevated Railroad Company et al.*, No. 522, on the docket of the United States Supreme Court, whose decedent, William A. McCoy, was plaintiff in the trial court, and that he has been counsel for the plaintiff from the commencement of this suit, in September, 1902.

2. Affiant further says that this is a suit in eminent domain, in which it is claimed (as in the last paragraph of the declaration therein), that the defendants in error, elevated railroad companies, "became and are bound to make full compensation to plaintiff" for the loss and damage arising from construction of an elevated railroad in Van Buren street, on which plaintiff's premises abut, "under the Constitution and Laws of the State of Illinois."

3. That the said elevated railroad—being a so-called "Loop" railroad serving the other elevated

railroad systems in Chicago as a down town loop terminal—was constructed and put into operation in October, 1897. That upon a trial of this cause, in the spring of the year 1914, a verdict for defendants was rendered, upon which judgment against plaintiff for costs was entered. On appeal to the Supreme Court of Illinois, the said judgment was affirmed. (*McCoy* v. *Union Elev. R. R. Co.*, 271 Ill. 490.)

4. The plaintiff's premises consist of a large semi-fireproof brick seven story and basement hotel, which property—"fee" and building—was variously estimated by the witnesses in this case to have had, at the time the said road was constructed, a fair cash market value in figures running from about $500,000 to $770,000. That the direct physical damage to said premises by the construction of the elevated road was fixed by plaintiff's expert witness at about $82,000, defendant's expert witnesses estimating "no damage"—they taking into account the supposed benefits which accrued to the premises from alleged increase of travel in the neighborhood herein which benefits are referred to as "travel benefits" or "general benefits."

5. Affiant further states that the general character of said premises and of the railroad structure in front of it is shown by photographs on pages 105 to 109 of the written record, and reprints of said photographs (very poorly reproduced), on pages 50 to 53 of the Printed Record.

6. Affiant further states that in its basal issues this cause is similar to the case of *Brand* v. *Union Elevated Railroad Company et al.*, decided in June,

1915 (238 U. S. 586). But the records of the cases are different in this: In that case this court held in its majority opinion that it could not review the issues in said cause; whereas, in the present case no such objection obtains and the said issues on their merits, as affiant believes, are bound to be reviewed. For there was here a three weeks' trial, much evidence being given by both parties; and the Federal questions here were duly raised upon a motion by plaintiffs for a new trial in the trial court, and have been thoroughly and consistently and persistently pressed since, not only in the trial court but in the Supreme Court of Illinois.

7. Affiant further states that this cause as now presented to this court involves matters of considerable public interest and is also presented under "special and peculiar circumstances," (Sec. 7, Rule 26) which in the judgment of counsel for plaintiffs in error call for its advancement upon the hearing docket, which circumstances affiant here shows to the court as follows:

(1) That the question to be submitted herein has already been presented to this court in such Brand case and fully argued (seven of the present justices having been on the bench when the Brand case was presented). That on said hearing the claim of the property owner was sustained by four of the nine justices, the dissenting opinion holding that to put the property owner to a trial in which his direct or physical damage was subject to be offset or reduced or estimated away by such an uncertain and speculative issue as general or "travel" benefits, was in effect taking his property "without due process

of law;" while the majority of five justices declined upon the technical state of the record to review because such general benefits were incapable of estimation, and that "in the circumstances we think the refusal to give positive direction to exclude from consideration something impossible of estimation was clearly right."

That while affiant can hardly claim that the specific question here presented was fully adjudicated by said ruling of the majority opinion, nevertheless the situation as he conceives approaches close to that of a "prior adjudication" referred to in Sec. 4 of said Rule 26.

(2) The said issue as to general benefits and the rulings in favor of allowing them (as instanced by the case of *R. R.* v. *Stickney*, 150 Ill. 362), particularly in late years, where such cases have arisen under complex modern city conditions, have caused an enormous amount of waste, confusion, and uncertainty in trials; and that if, as plaintiffs in error claim, the said manner of trial—namely, by allowing such issue to come into the case—infringes the Federal Constitution by putting a property owner to a vague and speculative and uncertain trial and also deprives him of a general community benefit which is justly his, it is, as affiant believes, a matter of great public interest and an issue of great public court economy in a number of states in the Union (where said practice yet obtains).

(3) That in substantiation of the above, affiant points to a matter now of public professional history—namely, the many involved trials in similar cases in the City of New York—and

calls particular attention to the preface to the book of Mr. Demarest on elevated railroad cases in New York published as early as 1894, wherein a "legion" of cases are referred to as the outcome largely of this "benefits" issue, and some 200 cases bearing upon such litigation are listed in said work, the greater portion of which are attributable chiefly to the mischievous element of "general benefits." That it is now a matter of experience as well as one appearing from the course of American law reports, tha. an enormous burden of litigation has been caused by the inclusion of this issue in such trials and trials have thereby been vastly multiplied in extent, and the uncertainty of results likewise multiplied, or increased.

8. Affiant further states that while said Brand case was pending in the Appellate Court of Illinois, as a basis for a motion to advance said case he made and filed therein on November 23, 1910, an affidavit from which he quotes paragraphs 4 to 7 and 10 thereof:

> "4. Affiant further states that since the elevated roads have been established in Chicago there have been, so far as he knows and has learned upon actual inquiry, very few of such cases tried" (naming four). "That such trials were conducted upon a basis substantially in line with the Stickney case ruling (and the judges on the trial thereof attempted to follow the same), namely, allowing an inquiry as to whether or not the property in question had increased in value by reason of travel furnished by the elevated roads. And that the great volume of evidence in the cases was directed towards showing the affirmative or negative of this proposition and with attempts to eliminate various other elements which entered into the

question of value, as increase of population, better or worse times, increase of other transportation facilities, general market conditions, etc. That each of said trials—of necessity and by reason of, as affiant believes, the widely speculative character of the evidence presented—lasted from six to nine weeks' time, and many thousands of pages of evidence were taken in each case.

"5. Affiant further states that in each of said four cases so tried the jury disagreed, and, as it was reported to affiant by the attorneys in the case at the time, in three of them almost evenly.

"6. Affiant further states that in the last of said four cases tried some four or five years ago and known as *Walker* v. *Union Elevated Railroad Company*, the trial lasted nine weeks. That in another case of appellants pending against the appellees herein, which was called for trial in June, 1908, Clarence S. Knight, Esq., attorney for appellees here and for the defendants therein, stated in open court (Judge Kavanagh presiding) and in the presence of the writer and his assistant and as a basis for a request to have the case continued or put over for trial, that 'it cost us' (the defendant companies) '$20,000 to try the last case' (the Walker case), 'and it will cost at least half of that to try this case' (said Brand case). That the language here quoted is taken from a stenographic report written up at the same time and on the same day on which the statement was made.

"7. Affiant further states that there have been pending for the last eight or nine years about or upwards of one hundred cases brought in the Cook County courts against the elevated road companies by abutters for damages to abutting property in the so-called 'downtown' district of Chicago (in fifteen of which cases affiant represents as attorney of record the plaintiffs). That on account of the abnormal length and cost of the trials in such cases as have been tried and the fact that the jury in each case (with the excep-

tion of the said Geohegan case) have disagreed therein, and such trials, therefore, having become abortive, the various attorneys for plaintiffs in such causes have been slow in bringing their cases on for trial and discouraged from so doing by reason of the fact of such excessive cost and the burdensomeness of such trials, and the apparent impossibility of getting juries to agree upon a question of such speculative character. That on account thereof the judges of said court are reluctant to set such causes for trial and inclined to put the same over from time to time, and that by reason thereof it is exceedingly difficult to get trials in such causes, and as affiant believes, as time goes on will become increasingly difficult unless the ruling in the said Stickney case shall be modified or changed and the trial of such causes simplified by eliminating all question of 'after effects,' so-called, and all effects except such as are 'direct, proximate and physical,' as contended for in the briefs of appellants herein.

* * * * *

"10. Affiant therefore believes that on account of the great number of pending suits, and the abnormal or colossal cost of nearly all of the trials heretofore had, and the fact that the decision of the main question presented by this record and mentioned hereinabove affects all of said suits, and if decided one way is bound to largely decrease, if not decimate, the length and cost of such trials, the issues here presented should be early presented and passed upon by this court, and by the Supreme Court; and that in furtherance of such object, this court should advance the cause and set the same down for early hearing."

9. Affiant further states that the facts stated in said quoted paragraphs were and are true.

10. Affiant further states that since said affidavit was made (in 1910), the course of said elevated

road litigation in Chicago, as to the suits still remaining undisposed of, in each of which trials the court attempted to follow said so-called Stickney case ruling allowing the general benefits issue to come into the case, is substantially as follows:

There have been (independently of the present case) four trials of such cases, in one of which, called the Geohegan case, a verdict for $7,200 was rendered in favor of plaintiffs, and which was later reversed by the Supreme Court for faults found in instructions; another case known as the Palmer case, in which the trial lasted six weeks and the jury disagreed, the cost of said trial on each side amounting to a number of thousands of dollars; and a case lately tried, *Brand* v. *Union Elevated Railroad Co. et al.*, affecting a piece of property on Van Buren street near the present McCoy property, in which a verdict of $5,800 was rendered for plaintiffs.

That each of the two verdicts for plaintiffs, having been rendered respectively sixteen and eighteen years after the damage had accrued (1897), represented original damages of but little more than one-half the amount of said verdicts, or what may be called almost nominal amounts, and which did not equal the actual cost of the litigation in either instance.

11. Affiant further states that he is informed by the clerk of this court that unless the above cause be advanced for hearing it will not be reached for at least another year, and he believes from a study of the docket perhaps a year and a half; and that if the judgment of the State Supreme Court shall be reversed, it will take from six months

to a year to get the cause reheard in the trial courts of Cook County; and if then appealed, it will take in the ordinary course a couple of years more to have it disposed of in the state courts.

12. That there are still pending about twenty of the one hundred "Loop" cases for damages referred to in the above affidavit,— of which pending cases affiant represents seven or eight. That on account of the great age of the cases, some of the local judges are now reluctant to have them await the result of this test case in this court. The result is, or is apt or bound to be, to occasion long and expensive trials as heretofore had, with the chances heavily in favor of jury disagreements or verdicts for defendants (the latter forced by sheer reason of the fact that if in doubt jurors are bound, under the instructions which the Illinois courts are now giving, to find for the defendants), or else an occasional compromise verdict for plaintiff for a nominal amount as in the two instances scheduled above.

13. That the cause mentioned above, known as the Palmer case has been re-set for trial for January 2, 1917, by the trial court of Cook County, to await the possible advancement of this present test case and if the same be not advanced or decided by that time a re-trial of said cause will be had—a cause the former trial of which lasted six weeks, as said above, and in which over 4,000 pages of testimony were taken—and then the jury disagreed.

And such is apt to be the result in other cases in which defendant companies are moving for trial ahead of the disposition of the main issue in this test case in this court.

15. That some twenty or thirty so-called "damage" cases which were brought by reason of the elevation of railroad tracks in Chicago from eight to twelve years ago involved this same question of "general benefits"; and the results generally from the cases so far tried have been in line with the results in the elevated road cases referred to above, namely, that long and expensive trials have been had, with a large proportion of jury disagreements, if not in the majority of cases tried.

That in one of such cases which affiant tried in the winter of 1912-1913 (*Caldwell* v. *City of Chicago*, No. 280,143 Superior Court Cook County), after a trial costing affiant's client above $3,000, and the defendants above $5,000, the jury disagreed. They formally and in open court in response to an inquiry by the court with consent of counsel giving as the reason therefor the involved question of general benefits. That thereupon the court set the case down for trial the next week, and after a second trial costing but little less, the jury again disagreed for the same expressed reason; and the cause is still pending.

16. That if the cause of plaintiffs in error should be sustained herein, the issue will involve a mere estimate of "direct, proximate and physical" effect from the establishment of the railroads in the street, and which issue ordinarily should consume not more than two or three days in the trial thereof, as contrasted with an average of nearly six weeks as respecting all of such elevated railroad trials had since said roads were established.

And hence that great economy is apt to be occa-

sioned by the advancement of the instant cause in this court.

HARRY S. MECARTNEY.

Subscribed and sworn to before me this 17th day of November, A. D. 1916.

BERTRAM H. MONTGOMERY,
Notary Public.

(Seal
Notary Public
Cook Co. Ill.)

IN THE

SUPREME COURT OF THE UNITED STATES,

October Term, 1916.

McCoy, *et al.*,
Plaintiffs in Error,
vs.
The Union Elevatod Railroad Company, et al.,
Defendants in Error.
} No. 522.

SUGGESTIONS IN SUPPORT OF ABOVE AND FOREGOING MOTION TO ADVANCE.

1. There is considerable in the affidavit—properly there as we think—which can be here referred to without repetition as argument in support of the motion.

2. In our modern more or less feverish and commercial life some false concepts occasionally creep into the body of our law—like that of the proverbial denial of the "law of motion" by the Greek philosophers—which it takes many years to dispel. The confusion, loss, and waste involved in some of these are, sadly enough, not appreciated until the colossal drain upon the resources of the community has been actually suffered.

3. Unique amongst these costly false concepts, as we submit, is the one of "general" or "travel" or "trade" benefits allowed by some courts to come into and to largely feature and dominate the trial of eminent domain cases.

The big object lessons on this subject have been furnished by New York and Chicago. In Boston the

mischief was heavily reduced by limiting the offsetting benefits to a local "district" or "neighborhood" benefit, such as is common to special assessment or "betterment" cases, and, of course, more nearly approaching a capability of estimation. But even with this limit, the Essex Hotel case in Boston, *Peabody* v. *Boston Elev. Ry. Co.*, 191 Mass. 513, gives a significant object lesson of how strangely speculative and fatuous are attempts to estimate instantaneous market benefit from the *counting of passengers at a railroad station,*—and where the court and referee as usual wearied under the burden of a "vast" amount of evidence.

4. The fact that this rule of inclusion-of-general-benefits and its resultant mischief does not obtain in most of the states does not render the instant issue devoid of "general public interest." For in a thoroughly united country sore spots upon the body politic or the body judicial affect of necessity the whole public.

And *twenty year lawsuits* are not a thing to be proud of in this land of "justice freely and without delay." (The damage here occurred in 1897.)

5. The rule here attacked in the instant suit is primarily the cause of these woefully protracted lawsuits yet pending in Chicago and mentioned in the affidavit. For when it costs a fortune to try a case, with several chances to one in favor of a disagreement, the claims of the moving party are either (1) finally abandoned, (2) compromised for a song, or (3) held open to await the possible dawning of a day when more economic justice may prevail.

And either of these forced results is not comfort-

ing nor reassuring to one's pride in the judicial system of his community.

6. That the situation or result can be accounted for makes it no less desirable that this court as early as possible should decide whether or not this woefully burdensome thing, this oppressive phantom which has harassed the cause of justice in a number of our American communities, can be reached by the strong and benign hand of the federal law, and dispelled and permanently banished from our land.

7. Even though we cannot claim here a full "prior adjudication" in the *Brand* case (as called for by Section 4 of Rule 26) the situation approaches very close thereto; and it should require but little in addition thereto to fulfill the call for "special and peculiar circumstances" in Section 7. And we have furnished more than a little.

8. The early decision of this case by this court will dispose of the constitutional question therein presented once for all for a large number of pending cases in Chicago involving the same question, which, during the year and a half before this case is likely to be reached (if not advanced), will be pressed for trial. And an early hearing of this case herein will save not only many weeks or months of such prolonged trials but also the review of such cases on appeal or writ of error if this court should sustain our contention. And, as we understand the situation in a number of other states, a similar and large economy in litigation may be subserved.

Respectfully submitted,

JOHN S. MILLER,
HARRY S. MECARTNEY,
For Plaintiffs in Error.

Office Supreme Court, U. S.
FILED
JAN 12 1918
JAMES D. MAHER,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1917.

No. 190.

SERNETTA J. McCOY and JOHN R. CAVERLY, Executors of the Estate of WILLIAM A. McCOY, deceased,
Plaintiffs in Error,

vs.

THE UNION ELEVATED RAILROAD COMPANY,
THE LAKE STREET ELEVATED RAILROAD COMPANY,
THE SOUTH SIDE ELEVATED RAILROAD COMPANY,
THE NORTHWESTERN ELEVATED RAILROAD COMPANY, and
THE METROPOLITAN WEST SIDE ELEVATED RAILROAD COMPANY,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Brief and Argument for Plaintiffs in Error.

JOHN S. MILLER,
HARRY S. MECARTNEY.
For Plaintiffs in Error.

BARNARD & MILLER PRINT, CHICAGO.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1917.

SERNETTA J. McCOY and JOHN R. CAVERLY, Executors of the Estate of WILLIAM A. McCOY, deceased,

Plaintiffs in Error,

vs.

THE UNION ELEVATED RAILROAD COMPANY, THE LAKE STREET ELEVATED RAILROAD COMPANY, THE SOUTH SIDE ELEVATED RAILROAD COMPANY, THE NORTHWESTERN ELEVATED RAILROAD COMANY, and THE METROPOLITAN WEST SIDE ELEVATED RAILROAD COMPANY,

Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

STATEMENT.

(*The references are all to the printed record.*)

This writ of error runs to the Supreme Court of the State of Illinois, and involves a review of the judgment of that court in *McCoy* v. *Union Elevated R. R. Co.*, 271 Ill. 490, rendered on February 16, 1916.

The action was brought by William A. McCoy against the elevated railroad companies mentioned in the caption, for damages to a "down town" hotel

property in Chicago, the value of which estate was estimated by his witnesses at $546,000, and the damage occasioned by the structure at $82,000. The action was brought against the "Union" Company, which constructed the "Loop" railroad and the four other companies which use it and for whose joint use it was constructed.

After a three weeks' trial in the Superior Court of Cook County a verdict for defendants resulted.

A written motion for a new trial was filed by plaintiff, setting forth specifically, among others, the Federal constitutional grounds herein asserted (301-6).

Said motion for new trial was overruled, and judgment entered on the verdict.

Later, McCoy died, and his executors sued out a writ of error in the Supreme Court of Illinois to reverse said judgment. That court affirmed, and ruled against the said "Federal" contentions of plaintiff, specifically assigned. (307-311 and 316.)

McCoy's executors bring the record here, and assert that such adverse ruling and the entire proceedings are an infringement of their rights arising under the "contract impairment," "due process," and "equal protection" clauses of the Federal Constitution.

A motion to advance the cause, based upon a sworn showing as to the importance of the issue involved, its general interest, and the mass of confusion caused by it, both in Chicago and elsewhere, was made in this court, but was denied.

The case is an action in eminent domain.

The Pleadings.

Plaintiff originally declared in one count as "the owner of the following described real estate, with the buildings thereon and the appurtenances thereto belonging," viz:

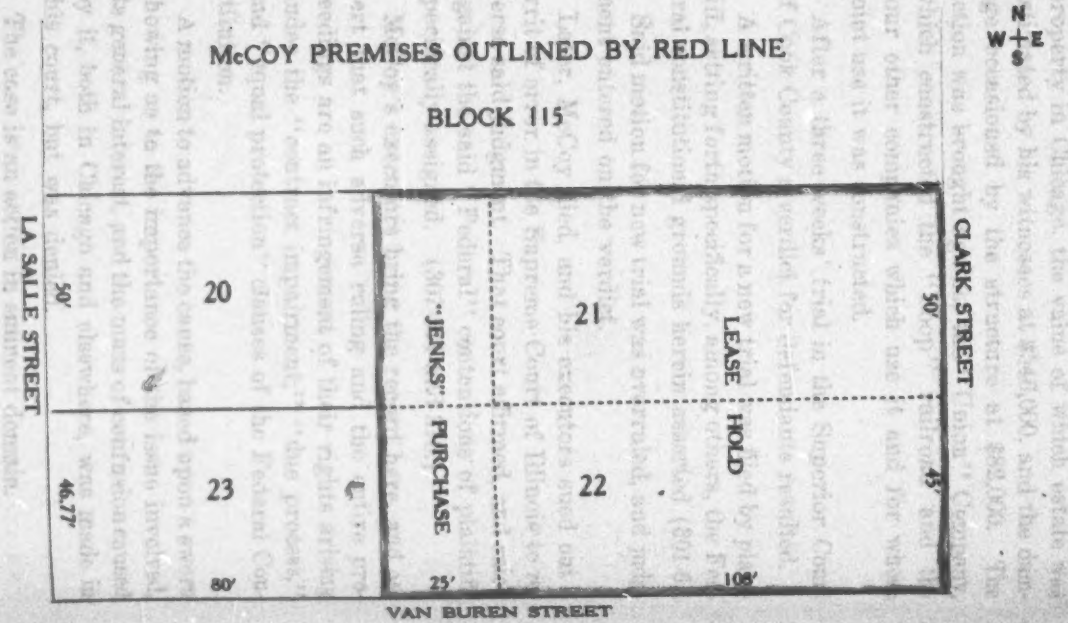
Lots 21 and 22 and the East 25 feet of Lots 20 and 23 in Block 116, School Section Addition to Chicago, constituting a hotel property "commonly known as McCoy's Hotel," etc.,

and claimed that permanent damages to the market value thereof had accrued from the construction of said railroad. (4-7.)

Later, and on October 9, 1903, an amended declaration was filed, consisting of two counts.

In the first, plaintiff declared as the owner of said property in language as just quoted. (8-11.) In the second (11-14) he averred that at the time, etc., he was "the owner as lessee under lease for the term of [illegible] years from, to wit: January 1, 1864, to, to wit: December 31, 1891, of Lots 21 and 22, [illegible] and the power in fee simple of the East twenty-five (25) feet of Lots twenty (20) and twenty-three (23) in Block One Hundred and Fifteen (115)," etc., "with the buildings on the aforesaid Lots 21 and 22 and the East 25 feet of Lots 20 and 23, and the appurtenances thereto belonging," etc.

In each count plaintiff proceeds to describe the property as "commonly known as McCoy's Hotel, located at the northwest corner of Clark and Van Buren streets, Chicago, which said premises were at the time aforesaid, and long thereto before have been and now are improved by a seven-story and basement brick and stone building occupied by the


McCOY PREMISES OUTLINED BY RED LINE
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CLARK STREET
VAN BUREN STREET
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21
22
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"JENKS" PURCHASE
25'
LEASE HOLD
108'
43'

The Pleadings.

Plaintiff originally declared in one count as "the owner of the following described real estate, with the buildings thereon and the appurtenances thereto belonging," viz.:

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and claimed that permanent damages to the market value thereof had accrued from the construction of said railroad. (4-7.)

Later, and on October 9, 1908, an amended declaration was filed, consisting of two counts.

In the first, plaintiff declared as the owner of said property in language as just quoted. (9-11.) In the second (11-14), he averred that at the time, etc., he was "the owner as lessee under lease for the term of ninety-nine years from, to wit: January 1, 1883, to, to wit: December 31, 1981, of Lots 21 and 22," etc., "and the owner in fee simple of the East twenty-five (25) feet of Lots twenty (20) and twenty-three (23) in Block One Hundred and Fifteen (115)," etc., "with the buildings on the aforesaid Lots 21 and 22 and the East 25 feet of Lots 20 and 23, and the appurtenances thereto belonging," etc.

In each count plaintiff proceeds to describe the property as "commonly known as McCoy's Hotel, located at the northwest corner of Clark and Van Buren streets, Chicago, which said premises were at the time aforesaid and from thence hitherto have been and now are improved by a seven-story and basement brick and stone building occupied by the

plaintiff and divers tenants of the plaintiff and particularly adapted, fitted up and used for business and hotel purposes, and having special value for said use and purposes," etc.

Plaintiff then proceeds in each count to set up the street easements appurtenant to the premises, the entry by defendants upon said street "on, to wit: October 1, 1897," and excavations made and the building of the said elevated railroad, and the permanent injury done from the inconveniences arising from impeding of access, obstruction of light, noise from the operation of the structure, vibrations of the building, and the casting of soot, smoke, steam, cinders, sparks, ashes, coal, dirt, water, snow, ice, grease, etc., causing also the air above said premises to be impregnated with disagreeable and harmful odors, etc.

To the damage of plaintiff of $150,000, etc.

That under the Constitution and laws of Illinois defendants "are bound to make full compensation to plaintiff for the said loss and damage," but that defendants though often requested have not done so, etc.

The defendants pleaded to original narr. (7, 8) which pleas were ordered to stand to the amended narr. (17),—

First, *not guilty.*

Second, that plaintiff *was not the owner* of the real estate and premises in said declaration described, nor of any interest in said premises.

Third, that defendants *did not build* the structure in question "on the *1st of April, 1896,* or at any other time before or since said day, and did not,

upon the completion of said structure and station house, *operate,* and have not since operated, any railroad cars, engines and trains, in manner and form as the plaintiff has thereof complained against them."

To the second count of amended narr. defendants later and further pleaded,

Fourth, That "the supposed cause of action" as per declaration "filed herein on October 9, 1908, did not accrue to the plaintiff at any time within five years next before the filing of said second count in said amended declaration, which said second count states a new cause of action, in manner and form as the plaintiff has above in said second count complained against them, the defendants, etc., and this defendants are ready to verify, etc." (17.)

A demurrer was filed by plaintiff to this last plea and was sustained. (18, 19.) So that the case was tried upon the two counts in the amended narr. and the first three pleas.

The road was of the ordinary type of elevated railroad structure, laid upon upright posts placed in the street roadway with cross-beams, broad lateral girders, and wooden cross-ties and rails on top thereof, in all about thirty feet high (as shown by photos and by testimony of Perkins 171-3). This road had the special feature of being used by four different supplying roads or feeders, and hence was specially noisy and offensive to abutting owners and their tenants.

AN EMINENT DOMAIN PROCEEDING.

Under the constitution of Illinois (adopted in 1870), wherever private property is "taken or damaged" for public use, "just compensation" is to be made therefor.

Extracts from Constitution of Illinois:

"ARTICLE II.

BILL OF RIGHTS.

"§2. No person shall be deprived of life, liberty or property, without due process of law.

* * * * *

"§13. Private property shall not be taken or damaged for public use without just compensation. Such compensation, when not made by the state, shall be ascertained by a jury, as shall be prescribed by law.

* * * * *

"§14. No *ex post facto* law, or law impairing the obligation of contracts, or making any irrevocable grant of special privileges or immunities, shall be passed."

Rev. Stat. Ills., 1895, pp. 54, 55.

Rev. Stat. Ills., 1912, pp. LIV., LV.

"ART. XI.

"§14. * * * The right of trial by jury shall be held inviolate in all trials of claims for compensation, when in the exercise of the said right of eminent domain, any incorporated company shall be interested either for or against the exercise of said right."

Rev. Stat. Ill., 1895, p. 73.

Rev. Stat. Ill., 1912, p. 72.

Extracts from Illinois Statutes:

(From Chapter 47 on Eminent Domain.)

Act in force July 1, 1872:

"1. Compensation—Jury.) §1. *Be it enacted* * * * That private property shall not be taken or damaged for public use without just compensation; and that in all cases in which compensation is not made by the state in its corporate capacity, such compensation shall be ascertained by a jury, as hereinafter prescribed.

"2. Proceedings—Parties.) §2. That in all cases where the right to take private property for public use, * * * or which may damage property not actually taken, has been heretofore or shall hereafter be conferred, * * * it shall be lawful for the party authorized to take or damage the property so required, * * * to apply to the judge of the Circuit or County Court, * * * by filing with the clerk a petition, setting forth, by reference, his or their authority in the premises, * * * and praying such judge to cause the compensation to be paid to the owner to be assessed.

* * * * *

"View of Premises—Verdict.) Sec. 9. Said jury shall go upon the land sought to be taken or damaged, and after hearing the proof offered make their report in writing, so as to clearly set forth and show the compensation ascertained to each person thereto entitled. Provided, that no benefit or advantages which may accrue to lands or property affected shall be set off against or deducted from such compensation in any case."

Rev. Stat. Ills., 1895, pp. 749, 750.

Rev. Stat. Ills., 1912, pp. 1099, 1101.

It has been ruled in Illinois, however, that where the public improvement is to be laid entirely in a public street (or alley or other public way) and does not *physically* appropriate any part or parcel of the

private lot or tract abutting thereon, and where the company *denies* any damage done to such property it may, at its election—provided it has received *public* authority or permission to construct its work in the street—proceed to erect the work *without* formal condemnation either in advance of or after construction.

The owner of an abutting lot, however, claiming damages thereto, can, in such case, *sue in a common law action* for such damages, *i. e.*, for a reduction in market value of the premises.

Stetson v. *Chicago*, 75 Ill. 74.
Rigney v. *Chicago*, 102 Ill. 64.

In such a case, the owner usually sues in trespass on the case—which is the form of the present action.

"Common law" court procedure (with, of course, many modifications made by statute) is in vogue in Illinois.

It has been settled that such common law action (like the instant case) is in its essence simply *an eminent domain proceeding*, and that all *rules of evidence* as to *damages and compensation* applicable to the statutory proceeding are applicable to such common law case, the same as if the public agency had admitted damages in the first instance "and a proceeding had been brought under the statute to ascertain the damage."

Rigney v. *Chicago, supra.*
C. & E. I. R. R. Co. v. *Loeb*, 118 Ill. 203 (214).
Penn. Mutual L. Ins. Co. v. *Heiss*, 141 Ill. 35.
Aldis v. *Union Elev. R. R. Co.*, 203 Ill. 567, 572, 3, 5 (involving this same "loop" railroad).

So, too, in Illinois, the structure is treated as *permanent;* and damages are recoverable in one "lump" sum and are deemed to have accrued *upon the instant* of the *establishment* of the public work and its being put into actual operation.

Same cases.

So, too, although local *municipal* eminent domain proceedings are specially provided for under a separate statute, Art. IX of Chap. 24, Rev. Stat. Ill. (1895, p. 278), "Cities, Villages and Towns" (not directly involved here and hence not quoted here but referred to *infra* in argument), it was held that Section 9 of said Eminent Domain statute quoted *supra,* applies to such a proceeding.

Harwood v. *Bloomington,* 124 Ill. 48, 50.

In the test case of *Aldis* v. *R. R., supra,* (decided in 1903), the elevated railroad companies (defendants in error here) claimed that the fact that this loop road was a local one and located in the street differentiated it from ordinary commercial railroads in respect to street damages, etc., *i. e.,* that it was in its essential nature not different from an ordinary street railway. But this claim was overruled and the road was held subject to the general railroad law of the state; and it was ruled that if the structure damaged abutting property *in fact,* the owner could recover therefor.

In Illinois there is no distinction made, as respects the right of an abutter to recover damages, between public works constructed by "private," *i. e., quasi* public corporations and those constructed by municipalities, such as is referred to in *Sauer* v. *New York,* 206 U. S. 536.

(*Rigney* v. *Chicago, supra.*)

Uniform principles, therefore, as to compensation benefits and damages apply to *all* eminent domain proceedings in Illinois and are based on the constitutional clause and the statute quoted above.

THE RAILROAD STRUCTURE.

The "down town" or central business district of Chicago—the heart of its intensified commercial life—is comprised within an area of approximately one and one-half square miles hemmed in by Lake Michigan on the east, the main branch or outlet of the Chicago River on the north, the south branch of the Chicago River on the west, and at the time the cause of action arose herein it "tapered off" at about Congress street on the south.

The line of the "Loop" road is a rectangle with sides approximately one-half and three-fourths of a mile long, viz.: North and south on Wabash avenue between Van Buren street and Lake street; west and east on Lake street between Wabash avenue and Fifth avenue; north and south on Fifth avenue between Lake street and Van Buren street, and east and west on Van Buren street between Fifth avenue and Wabash avenue. Trains run in each direction on different tracks around this Loop. It traverses and encloses the greater part of the main business district of the city.

The following sketch constructed from detailed testimony in the record and in accord with the published "down town" district of Chicago, shows generally the location of the Loop with reference to the various streets in the district, and is here appended for the convenience of the court.

(The red hand points to McCoy premises.)

CHICAGO RIVER
LAKE
RANDOLPH
WASHINGTON
MADISON
ADAMS
JACKSON
HARRISON
CHICAGO
RIVER
LAKE MICHIGAN
AVE.
BOUL.
MICHIGAN

Prior to the advent of the "Loop" railroad in question three elevated railroads had been established and put in operation in Chicago, between this main business center and outlying districts of the city, viz.:

(1) The South Side or "Alley" line (operated by the South Side Elevated Railroad Company), which was constructed to serve generally the South Division of Chicago, and which had a terminal at Congress street, one block south of Van Buren street, between Wabash avenue and State street. It had been constructed on its own purchased right of way along the alley between State street and Wabash avenue. (125.) It later was extended northerly by "curving" onto Wabash avenue and then extended due north to connect with the Loop at Van Buren, viz.: the southeast corner thereof. (124.)

Two lines which were serving generally the West Division of Chicago, viz.:

(2) The Lake street line, constructed in Lake street and sometimes referred to as the "Oak Park" line (operated by the Lake Street Elevated R. R. Co.), which crossed the river at Lake street, and as first constructed, turned south on Market street just east of the river, to Madison, where it had its first "down town" terminal. It later had extended its line from Market street east on Lake to Wabash avenue. Still later part of this extension, viz., between Fifth and Wabash avenue formed the north side of the "Loop," and hence the connection of this road with the Loop was at the junction of Lake street and Fifth avenue, viz.: the northwest corner thereof. (130.)

(3) The Metropolitan line, constructed on its own purchased right of way (17, 56), with a down town terminal on Franklin street between Van Buren street and Jackson boulevard and extending west with branches northwest and southwest. (It later was extended south in a curve to Van Buren street and then east on Van Buren street to connect with the Loop at Fifth avenue.) (125, 126.)

(The red rings on above plat show the location of the ante-loop downtown "L" terminals. The green hand points to location of McCoy's property.)

A fourth line called the Northwestern line (to be operated by the Northwestern Elevated R. R. Co.) had been authorized and was at the time that the "loop" road was ordained, in process of construction, which was intended to serve the North Division of Chicago, and whose line as it approached the down town district was located on Fifth avenue. Its terminal had apparently not been definitely located, but when and as finally constructed it joined the Loop at Fifth avenue and Lake street, viz., at the northwest corner thereof.

One of the "Division" roads, so to call them, viz.: the South Side line, was using steam engines at the time of loop construction, and did so for several years thereafter, when electricity was used, as it has been on all the other roads.

The plan of the Loop road was to connect the four "division" roads so as to allow all trains approaching the down town district to "Loop" the same and return on continuous passage.

THE PREMISES IN QUESTION.

The lots in the block face east and west, 21 and 22 being in the easterly tier, adjoining each other with lot 22 on the corner. There is no alley.

Lots 21 and 22 constitute the leasehold portion of the property, and together make a corner holding, 95 feet on Clark by 108 feet on Van Buren street.

The property was leased by McCoy and one Devine jointly from Albert and Henry Keep, fee owners, in 1882, for a 99-year term to commence on May 1, 1883. There was a separate lease from each landlord, in identical language, each lease covering an undivided half of the fee, and each providing for an annual rental of $4,000 (a total of $8,000) and for the early construction by the tenant of a building to cost at least $50,000. (22, 23, 36-44.)

Immediately after making the lease McCoy purchased Devine's interest (22, 44), and constructed on the corner the original hotel building with stores on ground floor as shown in the photos below, which was finished about June 1, 1884. (22, 23.)

About or shortly after this time the 25 feet adjoining this property on the west, being the east 25 feet of Lots 20 and 23 (said lots facing west, and being the southerly two lots of the westerly tier), and known as the "Jenks" property, was improved with a seven-story and basement building, corresponding in height and general plan of construction with the McCoy building adjoining on the east.

In 1887 McCoy purchased this Jenks property, obtaining a warranty deed therefor from one Curtis, who had obtained his deed from Jenks. (47.) He paid for this property $100,000.

He then connected this building with the hotel property, entrances being cut through the partition walls and finished off to correspond, etc., the whole constituting as averred in his declaration an entire "hotel building." (25.)

McCoy owned and managed the hotel from the time it was constructed continuously up to the time he sold the same in 1910, long after this suit was commenced. (22.)

The building was a semi-fireproof seven-story and basement, constructed and used for a hotel (68), which has been conducted on the European plan, and the trade of which has been "90% out of town" trade. (20, 32.)

The record seems to reveal no specific testimony as to the original cost of the buildings; but the estimates of the value of the combined building as late as 1894-5 ran from about $120,000 to $155,000. (143-4, 84.)

The case presented, then, was one where the premises involved had been specially devoted to a "particular use," having a particular market value for such use.

Scarcely a city block distant from these premises was the Grand Pacific Hotel, the Federal Building and the Board of Trade. Less than 200 feet away was the La Salle Street Station, the terminal of three big railroad systems, viz.: the Lake Shore, Rock Island, and Nickel Plate, two of which had a special suburban service. (26.)

The following other railroad stations were near, viz.: The Grand Central (B. & O. and Chicago Great Western), about four blocks away (Harrison and 5th

avenue); the Dearborn Station (Atchison, Eastern Illinois; Wabash, and Grand Trunk), five blocks away (Polk and Dearborn); the Union Station (Pennsylvania, Burlington, Alton and St. Paul systems), about five blocks (Canal and Adams).

A station for Illinois Central suburban trains was at the foot of Van Buren street, less than half a mile away and another at foot of Randolph. (208.)

Close to the premises and "on all sides" were surface street car lines connecting the downtown districts with other parts of the city and with the outlying districts served in part also by the elevated roads. Two of these lines were on the adjoining streets, Clark and Van Buren. (81, 82.)

The following five photographs (duplicates of those in the printed record, pp. 48 to 52, which latter were made without the original negatives) show the premises in question and the structure in front of it. They were taken a day or two before the trial in February, 1914, about two o'clock in the afternoon. (48.)

In the first, the viewer stands on Clark street, a little south of the southeast corner of Clark and Van Buren streets, and looks northwest. (48.)

In No. 2 he stands at the same place, the photograph showing the approximate height of a train with reference to the hotel windows when pulling out of the station at La Salle street immediately west of the premises. (The hotel extends to the tall building on the west called the Webster building, lately constructed. (50.)

In No. 3 he stands on the south side of Van Buren street, a little west of the premises, under the plat-

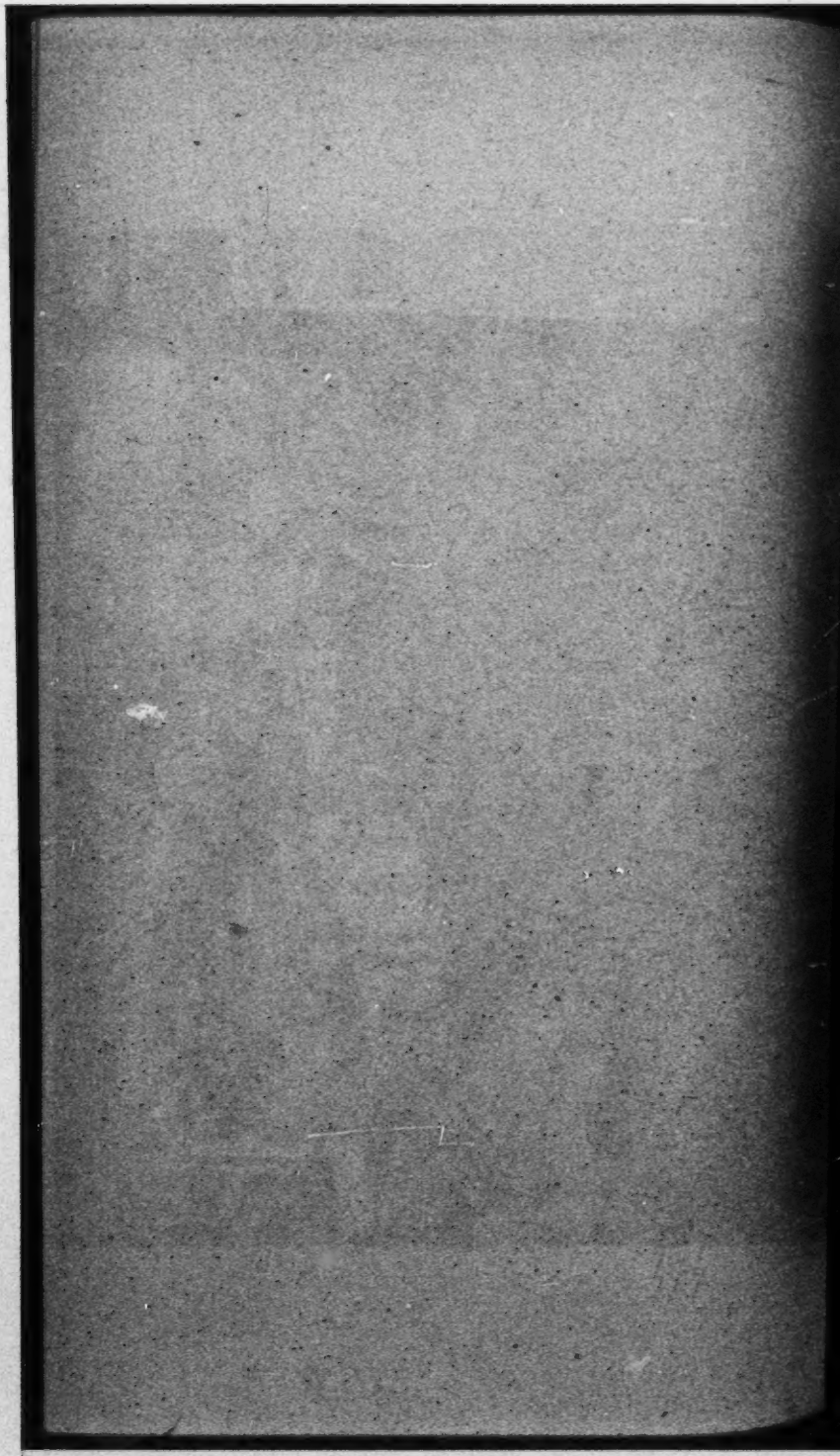
form of the said station, and looks northeast. (Hotel "Victoria" is the former McCoy's Hotel here involved.) (50.)

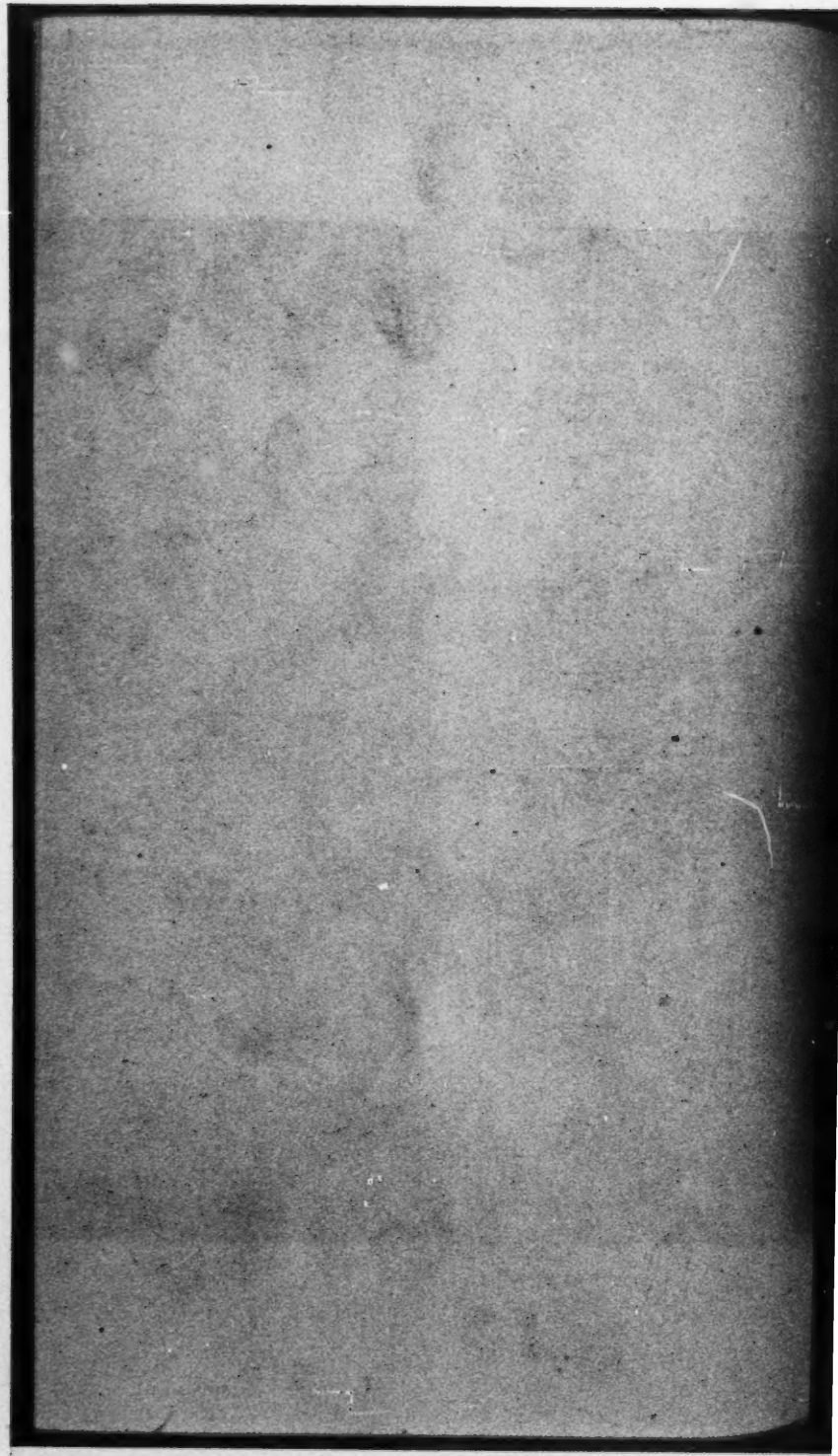
In No. 4, he stands directly opposite the last viewpoint, namely, on the north side of Van Buren street, directly west of the premises and near the entrance to the new Webster building, and looks east. (51.)

(Note: The sign "Thompson's" indicates the store on the ground floor of the Jenks building.)

In No. 5 the viewer stands at the northeast corner of Clark and Van Buren streets and looks west. (52.)

2





Van Buren street is but 66 feet wide, while Clark street, as are most of the streets in the "down town" district, is 80 feet wide. (26.)

Evidently by reason of this special narrowness the upright posts of the elevated structure in the Van Buren street side of the Loop were set within the curb line, namely, on the sidewalk, instead of in the roadway of the street. (30.)

There are four of these upright posts in the Van Buren street sidewalk along the premises, including the one on the corner.

It seems that a few months prior to the trial some change in the operation of trains on the Loop was made, in the way of a "through routing system." This occasioned an extension of some of the platforms of the stations, extending east towards the McCoy property about 48 feet farther than in the original plan. (53, 122.)

With this exception, the photographs show the physical condition of said structure as originally constructed and put to use in October, 1897. (122.)

The action then, upon plaintiff's theory of the case, was brought for "the direct, proximate and physical damage" occurring to the premises by the building of the elevated structure in the adjoining street for railroad purposes, and to be permanently used for "looping" the trains of the three systems already then existing and a fourth one then provided for and in course of construction.

Course of the Trial.

Plaintiff presented his case upon a basis usual to trials in courts where special direct market effects only are considered—only far more fully than necessary—namely:

a. He proved, the general situation surrounding the premises, its street and other neighborhood advantages, etc., its access to street car lines and depots, etc., immediately before the structure was erected. (24-30.)

He proved that at that time Van Buren street was fast developing in importance with over a half dozen most modern office buildings and "skyscrapers" then lately built upon it within the space of a third of a mile. (28, 29, 80, 81.)

He proved the annual rental value at that time of the hotel portion independently of stores to be $33,000. (80-82, 113.)

He proved the market value of his entire premises (*i. e.*, leasehold and "Jenk's" "fee"), at that time as $546,666. (84.)

b. He then proved the establishment of the structure in the street and the direct effect upon the enjoyment and actual use of the premises produced by the physical structure and its operation, viz.: the impeding of access, the darkening of the stores and hotel rooms, and the noise from trains produced in close proximity thereto, etc., etc. (although as we suggest such effects are obvious.) The top of the rails were on a level with the middle of the second-story windows, and the top of passing trains were on a level with the middle of the third-story windows. (29, 30, 85, 86, 115.)

c. He proved that by reason of the nearby "L" station (at La Salle street)—the platform of which extended almost to the premises—an unusual noise and racket, *i. e.*, unusual even to elevated roads except at stations—was caused by the starting and stopping of trains, due to the application of brakes, etc. (86.)

d. He proved the particular or peculiar effect of the "L" structure and operation upon the property as specially adapted to hotel purposes, and in particular that the south front rooms, especially those on the second and third floors—the best rooms of the hotel—were well occupied before the advent of the Loop, and were largely vacant and unoccupied afterwards. (29, 64.)

e. He proved that just at the time the structure had been put into operation, times throughout the city and country had suddenly revived, and that by the next year (1898) a great impetus had been given to business, and a decided advance had taken place in the market value of real estate in the city generally, as also in the downtown district. (96.) (This was corroborated by the experts of defendant.) (Wood, 160-3, 174; Whedon, 229.)

f. He proved that notwithstanding this, one of the stores of the premises (the Jenks), well occupied before, had been vacant about the time the Loop road was put into operation and for over a year thereafter (34); and that when it was rented the rent had fallen from $3,000 per year to $2,000. (34, 60.) That several others had failed to advance in rental value (Hynes, 56; Moehl, 61)—while several others (or at least one, the drug store on the corner) had advanced. (33, 54.)

g. He proved that since the Loop had been built not one modern structure had been put up on Van Buren street except two just being completed at the time of the trial. (29, 81.)

h. Although this evidence was amply sufficient to submit to the jury on the main issue, and for them to estimate fully the special direct and proximate effect, *i. e.*, damage, plaintiff also asked his expert witness Knott, to give an estimate in figures of actual damage done, which the latter placed at $81,999, or 15 per cent. of the then value of McCoy's total interest, viz.: $546,666. (84.) This was, too, but slightly over 10 per cent. of that witness' estimate of the total value of the entire premises, land and building, and as if owned in fee: $540,000 for corner, $115,000 for building, and $115,000 for Jenks property (83, 84)—total $770,000.

i. Plaintiff called but one other expert, Newell, a hotel architect of many years' experience in Chicago, and throughout the country and who had remodeled the McCoy Hotel in 1910 for the purchaser thereof from McCoy. (108, 110.)

He gave an estimate of an annual rental value of the hotel portion of the premises in immediate prior-Loop times of $33,000. (113.) He knew the value of the building then, and estimated it at $126,000. (111.)

He was then asked to estimate "the effect of the construction and operation of the Loop upon the then rental value of the hotel premises." The court ruled out the evidence over objection of plaintiff. (114.)

(Plaintiff claimed and herein claims that it is

through the effect upon the *actual use* of the premises that we get the effect upon rental value; and through the effect upon *rental* value that we get the effect on the *market* value. That such excluded evidence therefore is *no less* direct but rather *more so* than direct estimates of effect on market value; and hence that the excluded evidence was essentially germane.)

He stated that he was fairly familiar with down town ground values, and had kept track of them for many years. On objection by defendants that he was incompetent to estimate the ground values as of that time, he was asked to take his own estimate of the value of the building ($126,000) and assume a ground value of $5,000 a foot (the figure given by the witness Knott) and then to state his estimate of the effect of the road upon the entire premises. This question was also ruled out. (116.)

(Plaintiff claimed, and claims herein, that, as it would be competent for a real estate expert familiar with ground values to assume a building value given by a building contractor or construction expert and then estimate such effect, it was equally competent to have an expert on *buildings* assume a *ground* value given by another and so estimate effect.)

Note.—There was no contradiction by any of the witnesses in the case of the statement made by the defendants' witness Wood of the fact—a fact which we claim is also obvious—that the leasehold portion of the premises, having attained a value in 1897, variously estimated at from $270,000, including building (Strauss, 20, 23), to $431,666 (Knott, 84), the "L" road in question worked practically all its

damage upon the leasehold, and imposed at the most a mere nominal damage on the corner "fee." (Wood, 153.) It is obvious, therefore, as that witness stated, that the simplest way to view the damage or market effect is to consider the value of the entire premises as owned absolutely or in fee and so estimate the effect upon that; and this would represent with substantial accuracy the effect upon McCoy's interest.

Plaintiff presented his case, therefore, upon the basis that his damage was to be estimated:

(1) By taking the market value of the premises immediately before the advent of the Loop; then

(2) To consider how the structure in question placed in the block upon which his premises abutted (which defined the "physical" scope of his property or rights)—*forever dedicated to railroad uses and to be operated therefor*, would actually interfere with the *actual use and enjoyment* of the premises; and then

(3) To estimate to what extent such structure put or dedicated to such use, would reduce that market value. That is, to *capitalize* the permanent *interference, i. e.*, damage. (As laid down in Lewis, 3d Ed., § 693.)

The Defense.

In the trial court the main conflict was waged over the question as to whether or not the court should admit on behalf of defendants evidence of "general" or "travel" benefits occurring from the establishment of the Loop in its *entirety*, or whether the evidence should be held down to the issue of "direct, proximate and physical effect."

Said court, following the late ruling of the Illinois Supreme Court in *Brand* v. *Union Elev. R. R. Co.*, 258 Ill. 133 (a review of which was asked in this court in 238 U. S. 586, same title), tried the case upon the basis of allowing this special damage to be offset or reduced by, or considered in connection with the estimated amount of market benefit that accrued to the premises from "travel benefits."

Plaintiff's objections to such evidence, and his record in respect thereto, were fully saved throughout the trial. (104, 145-6, 88.) Exceptions were duly taken by plaintiff all through the trial to the overruling of his various objections; and an agreement was announced by court and counsel that plaintiff's objection to the element of travel benefit coming into the case and as if the objection "were made right along," overruled in each instance and exception taken; and a motion by plaintiff at close of the evidence to exclude such evidence, was overruled. (278.)

This basis—of allowing the "travel benefits" to be considered, etc.—having been early announced by the court, plaintiff then claimed:

(1) That no estimate whatever could be made or attempted in the way of such offset except that relating to the market effect arising from the amount of "L" travel or "passers by" occasioned by the Loop *over and above* that which the premises *already* had had from the pre-existing "L" roads with their downtown "stub" terminals as then established and provided for. This basis was unconsciously ignored by counsel for defense; for their evidence, *i. e.*, the estimates of most of their wit-

nesses, as appears below, included *all* the travel that passed over the Loop.

Since, too, it was settled law that the cause of action, if there was any at all, had occurred immediately upon the *establishment* of the Loop—*i. e.*, on October 3, 1897—plaintiff claimed,

(2) That of necessity the evidence of market value of the premises must be confined to that date, or at least to a very short period *immediately following* it; and

(3) That *estimates* of market *effect—whatever* elements were included or excluded—should be confined to that date, viz: October, 1897.

How far beyond this fixed scope as so claimed or defined the court allowed the evidence and estimates to go will appear from a mere outline of the course of defendant's evidence.

(a) All of the defendants' witnesses testified that the railroad "was a benefit" to the property. They each included in their estimate of market effect all of the travel which passed over the Loop, or which—using Mr. Strauss' term—was "dumped" therefrom on the downtown district—not attempting to credit the property the travel furnished or assured by the *pre-established systems;* and after vaguely attempting to modify such statement, bluntly stated that they had not attempted to distinguish between prior loop downtown travel and that subsequent. (Wood, 162; Howe, 191, 192; Strauss 210; Whedon, 227-8; Winston, 236, 239, 240; Kesner, 253.)

(b) Defendant also, in seeking to show the amount of travel which passed over the Loop, not only

showed in detail over the objection of plaintiff the extent and limits of the "L" systems existing at the time the Loop had been opened to traffic and of the Northwestern as then provided for (123-129), but were also allowed to give all the *extensions of said systems* which had been constructed *"in or prior to the year 1905,"* giving the number of tracks, the number of stations and their average distances apart, etc., etc. (124-132.)

(c) The court also allowed defendants' witnesses over the objection of plaintiff to estimate the value or the increase of value of the premises in question for various years long after the Loop was established, namely, *down to and including the year 1905.* (Record references in par. "f", *infra.*)

(e) To support defendants' claims of the value of the premises in the post-Loop times the court also, over the objection of plaintiff, allowed defendants to show some four different sales and leases of premises in the neighborhood, one more or less remote in distance, as plaintiff claimed, *nearly eight years* after Loop construction, namely, in the year 1905. (Greenebaum, 181-4; Eisendrath, 214.) (No other sales at any time after Loop construction were shown which might reduce or minimize the mischief therefrom if the ruling were, as plaintiff claims it was, erroneous.)

(f) The court also, over the objection of plaintiff, allowed defendants' experts and all of them (six in number), to *estimate* the *percentage* of the increase in market value of the premises which in their judgment was attributable *alone* to passengers or travel brought to the locality by the elevated road or Loop during each and all of the years *down to and includ-*

ing the year 1905. That is, they gave estimates of increase in value of the premises varying from *five to seven per cent. a year for such entire series of years,* and they then each estimated that "about one-half" or fully one-half was due to the elevated road. (Wood, 146-8; Howe, 186; Strauss, 205-6; Whedon, 226; Winston, 236; Kesner, 248.) That is, the court did not confine defendants to the *immediate* market effect in October, 1897, but allowed evidence of an eight-year margin of *continuing* effect.

The estimates of the various witnesses of defendants of "ante-Loop" values of the *entire* premises (as if owned in fee) ranged from $471,000 to $600,000, or an average of about $560,000. (142-3, 179, 202-4, 221-3, 234-5, 245-7.)

Several estimated that immediate post-Loop values, that is, late in 1897 or early in 1898, were 33 1/3 per cent. to 40 per cent. over what they had been in 1894-5-6, prior to the beginning of Loop construction and from over half to three-fourths of this estimated increase came from the elevated road.

Several declined to give any "immediate effect" estimates (Wood, 155-6; Kesner, 253-4), and one (Wood) stated that such an estimate, *i. e.*, from travel benefits, could not be made (155-6), a statement with which of course plaintiffs agree.

Each of them said in the first instance that he had estimated market effect *solely* from the element of *travel* furnished by the road.

Each was in turn shown the photographs in question, and each said that there *"was no other element"* that had entered into their calculation, nor which they "could think of" at the moment, etc.

After persistent cross-examination each one admitted that the *structure* and its *noisy operation were* elements of *some* inconvenience to the property and hence of *some* damage to its market value. (Wood, 153-6; Howe, 193-5; Strauss, 218; Whedon, 230; Winston, 237-8; Kesner, 255-7.)

Each and all stated that they had not tried to estimate this in and by itself,—*i. e.*, either or both elements of *structure and noise*—and all stated that it was "*impossible* for any one" to estimate such effect. (156.) *That is, it was possible for them to estimate "travel benefit" but* **not** *possible to estimate* **direct physical effect**—*which nearly all the courts throughout the country hold is the* **only thing which can be estimated at all.**

In addition to all this, the court allowed defendants to show that *since the year 1905*—to which it had limited specific value and "percentage" estimates—there had been *a, no reduction in rents* of the stores on the premises (Krouskup, 55; Hines, 57; Davis, 60; Moehl, 62), and *b, no loss in market value* of the premises. (147, 187, 236.)

To illustrate more fully:

Defendant's experts, as said above, had testified after this fashion:

That the effect of the elevated road had been "beneficial." That the market value of said premises had been *from year to year* increased by such element—working of course *in conjunction with other* elements. They then gave the percentage of such total increase in market value; and then estimated

that at least one-half of this increase was due to the elevated road, and one-half or less to "increased population of the city," and some said "to other causes."

They admitted that times had picked up in 1897, and that there had been a *general advance in real estate* values in 1898, and that from that time on real estate values all over the city steadily improved in value and were upon an up-grade or *rising market*.

Asked to estimate what portion of the increase in value they attributed to the better times or general increase of trade, or *any other* indirect elements, each answered that he had not done it, could not do it, and would not attempt it.

They said that the elevated road had specially benefited the *downtown district* north of Harrison street. They were asked to estimate the total or general percentage of advance of property in that district so benefited—as in case of spreading a special assessment. They said they could not do so, had not attempted it and would not attempt it. (200, 210, 211.)

They stated that the Loop increased not only the market values in the down town district, but also that of the property in the *outlying* districts and along the line of all the elevated roads. (196, 210, 211.) They were asked to estimate to what extent such districts were benefited thereby. The evidence was excluded.

Several were asked if a *subway* would not have benefited the property as much as the Loop, but the court ruled out this evidence. (212.)

They stated that during these same years (1894 to 1905) the suburban travel on *steam roads* entering the city and with down town terminals had greatly increased, and that such element had had a tendency to increase the values of property generally, this property included.

Asked to estimate this increase, they stated they could not do so. (228, 240.)

They stated that there were many *cross-town street car lines* that were constructed or extended during said period, each of which of course furnished travel to the "L" roads and through them to the Loop. (162.) Asked to estimate the market increase or percentage from *this* source, the same answer was given: It was "impossible."

They stated that there was a large increase in the *street car* service generally during these same years, both downtown and *throughout the city*, and that the same would have a tendency to increase such value. They were asked to estimate the increase from such element, with the same result.

They stated that it was a benefit to the property to have the *street car lines* on Clark street and Van Buren street adjoining the premises, and that they affected and increased the market value of the property. They were asked to estimate the amount of this increase—of either or both lines, and stated they could not do so. "It was impossible." (Strauss, 216.)

They also stated that during those years there had been great changes in *vehicles* and conveyances as generally used (particularly noting the growth of automobiles), which increased the travel to the

down town district and hence to this property in particular. (132, 143.) They were asked to estimate the increase in market value from this element, with the same result. (Although one of them, Whedon, mentioned a district on the South Side from 12th to 31st, where there had been no changes in "L" service where prices had advanced or doubled in a couple of years *chiefly* on account of the growth of automobile *business* in such district.

One said that an *ordinance* limiting the height of buildings would have affected the down town values. (219.) And that a *"transfer" ordinance* in street car travel, *i. e.*, "one city—one fare," would have done so. (219.)

That there was an *inherent tendency* in the growth of *all* big cities to centralize business and *values*. (259.)

They were also allowed over objection of plaintiff to testify that vacant or sparsely settled outlying districts had been much built up after the "L" roads had been constructed, through them—to show the beneficial effect from such roads.

Finally they stated that the *only* thing they *could* estimate in substance was the market effect arising from the *increased travel* or "passers by," at the same time admitting that the actual increase in the market value, even with travel benefits thrown in, was produced by these various elements "working together" and "acting upon each other" and producing *"a fusion"* or *"a compound."* (Strauss, 218; Winston, 240.)

They could mention no definite way or process *by which they were able to extract the one element from*

the compound or fusion which occurred in October, 1897—or from the market fermentation of later years—and estimate it; and could furnish no method by which they arrived at their tendered result.

These witnesses were evidently among the most prominent real estate men of Chicago, and had testified in a number of similar cases before. (249.)

Several of these witnesses were asked by plaintiff's counsel to estimate the market effect on the Loop *railroad* property (or stock and bonds) by building a structure upon a vacant lot adjoining it, but the question was ruled out. (197, 242.)

Defendants over plaintiff's objection produced figures of paid passengers at the down town Loop stations for the year 1897 (only 3 months of operation in that year) down to and including the year 1905 (133-135), totals being given (McRae) on page 136.

The Rebuttal.

After all this evidence and these estimates of defendants had been put into the case,—bearing both upon "*instantaneous*" market effect and *continuous* market effect *for a series of years*—the plaintiff offered certain specific figures and data bearing upon a number of elements, each of which defendant's experts had admitted to have had a market effect or influence upon the premises in question for the same period—and which were hence *embodied* or involved in their *own* estimates of increase of value and of a "travel benefits" "percentage" thereof.

Plaintiff to counteract the effect of the "millions"

of paid "L" passengers showed that at the two downtown "suburban travel" stations alone, of the Illinois Central Railroad there were 8,000,000 paid passengers in 1895, which had increased to 13,000,000 by 1905.

Plaintiff then offered evidence of increase of population of the city; increase of street car travel in the city during some of these same years, 1898 to 1902 (265-6-7)—all of which lines furnished of course traffic to the "L" roads and thus to the Loop; evidence of better business conditions as indicated by bank deposits for the year 1894, 1900 and 1905, increase of trade and manufactures in the city, etc., etc. (277-8); evidence that the "Loop" had become congested by 1902, at least during a large portion of the day, etc. (266-7); the probability of a subway being built if the Loop had not been, its feasibility, etc.

The trial court ruled out all of this evidence, "for fear of what it would lead to"; while plaintiff claimed that **what it would lead to** *was the very best proof and the best "brief and argument" to support his claim to a* **total** *exclusion of such* **entire issue.** But that if one conjectural and speculative element was to be singled out and go in against him, and as evidence tending to destroy his proven concept of *special* or *direct* damage and the estimate thereof of his own witnesses, etc., *he* should be allowed to present *other* speculative and conjectural elements and estimates of the *same class* and *character* or "just as good" to offset or rebut such reduction, or to disprove or reduce estimates of that character furnished by defendants—this in order to account at least in part for the alleged increase in market value.

Plaintiff then in further rebuttal called one of defendants' officials, Mahan, who gave perhaps the most important item of evidence in the entire case, at least as respects the "travel benefits" issue, that is, the total amount of paid "L" passengers at the downtown or "stub" terminals *prior* to "Loop" construction, *i. e.*, for the years 1894 to 1897—leaving these to be compared with the post-loop station trade.

Plaintiff claims, and argues *infra*, that these figures prove not merely how conjectural and unsubstantial were the so-called estimates of defendant's experts, but that they practically leave *no "figure" basis whatsoever* for them. *That the figures show practically* **no increase** *in downtown "L" traffic for several years after Loop construction above that which would* **naturally** *have come from several years of good times and increase of population, etc., with the "stub" terminal roads existing as they were prior to the advent of the Loop. That they leave practically no basis whatever,* upon which to offset by even *the most vague and conjectural guesses,* the special damage—which latter is apparent from the photos alone.

While the Lake street road had kept a record of total city traffic for the years 1894 on, it had kept no separate record prior to 1898 of passengers at its two down town terminals, viz.: at Market and Madison Sts., and at State and Lake Sts. (270.)

Hence, the figures given by Mr. Mahan covered only the down town terminals of the South Side road at Congress St. and of the Metropolitan on Franklin St.

The Metropolitan had been completed early in 1895, the construction company operating it in May and June of that year (269). So that the year 1896 is the first complete year for the figures from the two roads, while the year 1897 cannot be reckoned either as a prior-loop or a post-loop year.

It appears, then, that the total paid passengers at the former (South Side) terminal in the year 1896—the latest complete ante-loop year—

were (268) 4,286,300

For the Metropolitan they were (269)..... 4,540,044

A total of 9,366,344

It is thus seen that if the Lake St. road (the oldest and having *two* down town terminals) be allowed in estimate merely the average down town traffic of the two reported roads for the year 1896, we would have to add to this figure of 9,366,344, the one-half thereof, or..... 4,683,172

A total of 14,049,516

This figure practically equals the total traffic with the Loop in full operation two years later and with better times at hand, For,—

Taking the year 1898, the first post-loop year for which there is a record for the whole three roads in the Loop district, there was a total (136) of but..... 14,138,946

It will appear, too, that in 1899, with the Loop in operation for nearly two years, the total down town "L" traffic was but 21,364,174 (136), or 50 per cent. greater than it was three years before, viz.: in 1896 and this upon a rising business "boom."

Plaintiffs claim that these figures in and of themselves practically destroy all these estimates of defendants' witnesses, and leaves little or nothing as a basis for even the *sheerest quesses* as to "instantaneous" offset to physical damage which latter as every one concedes, *was* instantaneous, and which, as proven by the photos alone, was heavy indeed.

That they prove, that, as the courts accurately rule, all such public improvements *are a growth*, so far as general or community benefits are concerned.

To rebut the inference of great and immediate or unusual increase of "down town" travel from 1896 to 1898—about 50 per cent.—as compared with other travel in the city, plaintiff showed the total traffic of the three entire systems in 1896 was $39,807,422, and in 1898, $55,204,838 (about 42 per cent. (270).

But the court allowed defendants, over plaintiff's objection, to "go one better," and give the entire "L" traffic for the city down to and including the year 1905—showing that in 1899 such entire paid traffic was $64,794,633, and in 1905, $123,599.107 (271).

But all this showed in turn that the increase in down town or "Loop" travel from 1899 to 1905 (from $21,364,174 to $41,761,069) (136), was no greater than the general increase of "L" travel throughout the entire city—about double in each instance.

But plaintiff claimed, and here claims:

That in addition to other reasons given, it is perfectly impossible for any one to estimate or com-

pute, or in fact to think of, any market increase occurring from such a public improvement without realizing or computing or thinking of improvements or conveniences *which would of necessity or in the natural course of events have been furnished* had it not been for the *particular* improvement which *was* furnished.

That is to say: If it be a *duty* on the part of the state *to provide* for public conveniences needed from time to time by its various communities, it would have to be *assumed* by the witnesses that it would be done in *the natural course of events.* That is, one would have to assume in this case that, had it not been for this Loop, and if an interchange of downtown "L" traffic were sorely needed, it would have been furnished by a subway or moving sidewalk, or by *some* special line of conveyances connecting the terminals or by some *other* means,—and this in ordinary course or without inordinate delay.

The feasibility of a subway as a *probable* substitute, plaintiff claimed was therefore pertinent evidence; and that it was error to rule it out (212).

But, after all, the main value of all this rebuttal evidence, or rather the chief object subserved in offering it, was chiefly to show the highly conjectural character of this "travel" element and of the "estimates" of their market effect. And to prove that the estimates and elements figured by defendants should have been offset in rebuttal by others of like character is only to emphasize and to prove again the absurd and conjectural character of the *entire* subject—to prove that the whole subject should have been eliminated from the trial.

In short, a full appreciation of this fact can be

best obtained by the court's reading in full the cross-examination of any one of defendants' highly trained experts (that of Wood is printed complete) —each in turn helpless to do anything but simply *guess at* both the immediate effect of the one "fused" element of the "compound," and then the *continuing* effect of years thereafter of *one element* of this ever changing fusion—*i. e.*, of the *fermentation.*

The Instructions.

The instructions of the court were at least as wide in scope as the evidence and "estimates" above detailed.

In the printed record, p. 279 to top of p. 281, are the instructions which were tendered by plaintiff.

On pp. 281-287 are those which were tendered by the defendants.

From p. 287 to p. 293 are the instructions which the court gave, and each is numbered and marked "Given."

From p. 293 to p. 301 is the list of instructions which were "refused" by the court, also numbered.

By comparing the "Given" and "Refused" instructions with the instructions tendered by each of the parties it can be told whether any particular instruction, "Given" or "Refused," was tendered by plaintiff or defendants.

We call the court's attention to the chief rulings on instructions, which are here challenged and as to which plaintiff duly excepted (300-1) on the trial, in his motion for a new trial (304-6), and in his assignments of error in the State Supreme Court

(309-11) (and which are repeated in the assignments made here, pp. 324-6) as follows, viz.:

The plaintiff requested an instruction to the effect:

That the jury "*are to exclude from consideration all benefit which accrued to the said premises or to the owners thereof by reason of improved travel facilities furnished by said elevated railroad.*" (p. 280.)

This instruction is found in the list of "Refused" instructions, and is No. 7 thereof, p. 295.

In the event that the court should refuse to so eliminate "travel benefits" from consideration, plaintiff then sought to have the element controlled by the following instructions, which were tendered "in the alternative," that the court refused the one just quoted, viz:

That the jury could only consider "benefits from the particular location of *stations* or other *special* transit facilities," etc., (as ruled in New York, *infra*).

Such instruction was refused, being No. 8 of "Refused" instructions, p. 295.

Another instruction tendered in a similar alternative was that if the jury found the premises had been damaged from the construction of the road in the street, "the *burden* of showing any offset to or reduction of the amount of such damage by reason of market benefit *from travel facilities* furnished by the so-called 'Loop' railroad to the premises in question is upon the *defendants*" which was refused, being No. 9 of "Refused" instructions, p. 295.

Plaintiff tendered another instruction, that "you

are to consider only such elements of benefits or damages which in an appreciable degree are *capable of estimation in dollars and cents*, either singly or in connection with other elements, as shown by the evidence in the case," which was refused (No. 10 of "Refused" instructions, p. 295).

The plaintiff then asked the court to submit a "*special question*" to the jury, to find the damage, if any, occurring from the railroad structure, "*independently* of any market effect from *improved travel facilities* furnished by the so-called 'Loop' railroad" (p. 301), but the court refused to submit the same.

The court also modified the plaintiff's tendered instructions (tendered, pp. 279-80) changing the term "damages from the *construction* of the railroad *for* railroad *purposes*" to the term "damages from the construction, *maintenance and operation* of the structure in question" (Nos. 8, 9 and 10 of "Given" instructions, p. 289 and Nos. 5, 4 and 3 of "Refused," p. 294).

As to instructions given for defendants:

To appreciate these we must bear in mind the fact that *all* of defendants' evidence,—independently of certain *admissions* of *physical* injury from the structure and noise,—was simply a mass of evidence as to additional travel and of estimates of the "whole effect" of the road, considering physical elements *and general* and indirect effect travel benefits in their *entirety*. That is an attempt *to blend* both these classes of effects, and then a claim—*i. e., assertion*—that a large *net* benefit occurred therefrom.

The court instructed the jury on behalf of defendants (289-293) as follows:

That the "damages" which plaintiff sought to recover "can in the eye of the law only be a *loss in market value* * * * arising from the said construction, *maintenance and operation*"—a continuing effect concept (No. 10);

That the action had been brought for all damages, "past, *present*, and *future*, because of the construction, *maintenance and operation*" (No. 11);

That they should consider "*all elements of* * * * *maintenance and operation*," "both elements which are a damage and elements which are a special benefit," and thus "determine what is the *total effect* of the construction, *maintenance and operation*," etc. "Your verdict should be based upon the *total* or *whole* effect and not on any partial effect";

That the "special benefits" which they are to consider are such as "beneficially affect its fair cash *market value*, as distinguished from those benefits which are common to the public at large, which are termed 'general benefits'" * * * "but you should take into consideration special benefits, if any * * * from the construction, *maintenance, and operation* of defendants' said elevated railroad" (No. 14);

The jury were told that if the premises "was *enhanced*" in its fair cash market value "by reason of * * * the *maintenance and operation* of the elevated railroad of the defendants, such increase in market value is a *special benefit* to the property of the plaintiff and not a general benefit, although other *property in the vicinity* of plaintiff's property was also enhanced in its fair cash market value to a greater or less degree by reason of the construction, *maintenance, and operation* of defendants' said ele-

vated railroad" (No. 15, enforced by No. 13 where the term "property in the *neighborhood*" is used instead.).

They were told that "the damage to property" for which the plaintiff was suing "*does not mean merely physical injury* to the property, for property may be injured in a physical sense and *yet be not damaged* in the sense in which the word is used in these instructions" (No. 17).

No. 22: "It is your duty to determine whether the evidence produced by the plaintiff outweighs that *produced by defendants,*" (all of the latter involving "travel benefits"), "and if, after considering all the evidence in this case, you find that the plaintiff has failed to show by a preponderance or greater weight of the evidence that his property *is* damaged; if the evidence upon that question is equally balanced, or if the jury after considering all the evidence *cannot tell* from the evidence *whether or not the plaintiff's property has been damaged, then the jury should find the defendants not guilty.*"

The court thus in giving the instructions of defendants not only expressly extended the inquiry beyond physical scope, not only included *all elements* which produced "market value"; but repeatedly used the term "construction, *maintenance and operation*" of said road. (290-2.) All this, in connection with the volume of testimony as to the eight year period subsequent to construction plainly suggested the idea of a *continuing* market benefit which the jury were thus allowed to consider.

We further call particular attention to No. 16 of "Given" instructions (291), where the jury are instructed that even though they should find damage

"from noise (physical damage), etc.," "still if you believe from the evidence that notwithstanding these things the said property of the plaintiff *since the time of the putting in operation of the defendants'* elevated railroad, did not suffer and *has never suffered* any loss or injury in its fair cash market value by reason of the construction, *maintenance*, and *operation* of said elevated railroad, *the plaintiff cannot recover in this case,*" thus bringing into play the evidence so wrongly given by defendants and allowing the jury to consider even *the then present day* conditions (*in 1916*), *i. e.*, a *16 year* market "*fermentation.*"

We have outlined at great detail the course of this trial, the various features of the evidence, the rulings on instructions, etc., because we feel that the whole proceeding is indeed a splendid sample of the fruit of allowing the mischief-breeding element of "general benefits" to come into an inquiry as to property damage from public works in a modern and many-featured city.

The scope of the inquiry which the court thus allows—and which is ever involved in a "general benefits" inquiry—is obviously city-wide, yes, wider than that. And when a citizen as a *condition precedent* to a recovery for a *direct* damage to his property *has to prove or account for all the elements that produce market value,* (the entire *medium of market impulses* so to speak), and also *the proportion of effect* furnished by each, and produce "experts," or in fact *chemists* to enlighten the jury upon the subject, and then take the chances of twelve men agreeing upon the result—the result is: Either his

property taken without due process of law, or a trial denied him. For an impossible or farcical trial is no trial at all.

Plaintiff's case in outline.

(*The italics here and in quotations in this brief, where not otherwise noted, are ours.*)

We here re-quote Section 9 of the 1872 eminent domain statute, which has remained in force ever since its enactment, viz.:

> "Sec. 9. Said jury shall go upon the land sought to be taken *or damaged*, and after hearing the proof offered make their report in writing, so as to clearly set forth *and show the compensation ascertained to each person thereto entitled.* Provided, *that* **no benefits or advantages** *which may accrue to lands or property* **affected** *shall be* **set off against or deducted from** *such compensation* **in any case.**"
>
> Rev. Stat. Ill. (1912), p. 1101; Chap. 47, Sec. 9.

The claim of plaintiffs then in its full "distributive" showing is this:

First. That to exclude them as property owners from sharing in the *local or "district"* or *"community" market benefit* if any, arising from the *establishment* of the public improvement *as a whole* is clearly *unjust* and is *per se, i. e., in principle, a,* an impairment of their contract rights, *b,* a denial of the "equal protection" (or benefit) "of the laws" and *c,* a "deprivation of property without due process of law" forbidden by both the State and the Federal constitutions.

Second. That such "community" benefits are ab-

solutely *incapable* of even *approximate estimation*—they are "*uncertain, incapable of estimation and future*" (*Beveridge* v. *Lewis*, 137 Cal. 619, 624 *infra*); that such a ruling, assuming to estimate and deduct them from damages, opens wide the door to speculative evidence, not only increases but *multiplies* the length and expense of trials, and produces and is ever bound to produce in jury cases *either disagreements* or verdicts for defendants—with the occasional exception of a verdict for plaintiff *in spite* of the rulings of the court, *i. e.*, a verdict *on instinct*.

That *in and of itself* such a rule amounts to a *denial of justice*—and certainly a denial of "justice freely and without delay"; while in the few jurisdictions where the rule *has* been attempted to be applied (as in New York and several others) it has produced such a plethora of speculative, costly and uncertain litigation as to shock our entire judicial and professional conscience, and to render such plank in the "bill of rights" as applied to such *class* of cases—at least largely—*a farce*, while,

Third. The almost limitless bounds to evidence as to general market benefits allowed by the trial court in the *instant* case, and the whole proceeding here was *per se* oppressively and rankly speculative—a trial which could only have resulted either in a jury disagreement *or* if the instructions were followed, in a verdict for defendants. For the jury were bound to yield to the instruction that if they "*could not tell from the evidence whether or not* the plaintiff property has been damaged, (*i. e.*, if they could not do the impossible and *measure* "travel benefit" effect), *then* the jury should find the defendants not guilty." (No. 22 of "Given" instructions, p. 293.)

Fourth. That *in addition* to being an *unjust* rule, it is violative of said above quoted *express* guaranty of the Illinois Constitution in reference to "just compensation". For this clause, *independently of* the statute referred to in the next paragraph—had been *specifically adjudged by a number of Illinois cases,* some decided before such statute was passed and others afterward, to have *excluded* such general or "local" market benefit.

Fifth. That *in addition,* such a ruling is a violation of the *plain, specific* and *comprehensive* terms of Section 9 of the Illinois Eminent Domain *statute*—a statute which the Illinois Supreme Court had once said in practically the initial case construing it, "*is too plain to bear construction.*" (*R. R.* v. *Henry,* 79 Ill. 290.)

That is to say, that this express *statute* upon its *face,* and by *reason of its own vigor, forbids* such a ruling as was here made, and that the latter is "a deprivation of property without due process of law."

(That as a matter of fact, the language of the statute on its face forbids in effect the allowance of even *special* benefits, and it has to be strained to *some* extent to do so. But to go still further and include or allow in offset to *special damage,* a "*general*" or "local" or "district" or "neighborhood" or "community" market *benefit* accruing from the improvement *in its entirety,* is to doubly violate the terms of the statute, or at least to do so with double force.)

Sixth. That *in addition* to the plain *injustice* involved in the ruling, *in addition* to the settled rulings under the Illinois *constitutional* clause, and *in addition* to the *plain demands* of the statute by reason of its *bare terms, a long line of consistent decisions*

covering a period of over 20 years (during which period plaintiff purchased his premises) had been rendered *construing* this statute and *uniformly* laying down a rule *in consonance with its plain terms, (as per decisions listed, infra)*; *after* which—and shortly before this loop structure had been ordained (*i. e.*, in 1894)— the decision of *R. R.* v. *Stickney*, 150 Ill. 362, was rendered, in which the Illinois court attempted for the first time to reverse such rule.

We say, "attempted to reverse such rule." We show, *infra*, that it attempted to modify the rule in one respect, in the same breath *affirming it bodily* —all resulting in a *pure contradiction* on the face of such opinion. And in the subsequent decisions the few which attempt to follow it resulted in the same way—a pure contradiction. While the others *distinctly re-affirm* the prior cases and the settled rule; and they are so distinctly and squarely *in line* with it that we can safely claim (as held in effect in Mr. Justice Cartwright's dissenting opinion in the Brand case, *infra*) that the *entire current* of authority for the **whole forty year** *period* is uniformly *in line* with this plain statute— *i. e.*, ignoring that which is heresy dictum in the **language** of the Stickney case ruling, and the few cases that repeat it.

Plaintiffs then assert: *That a rule of law so established cannot be reversed without prejudice to their constitutional rights*, etc. That therefore the late decision and judgment here attacked fall within the pale of legally arbitrary ones and the same constitute an "impairment" and a taking, etc., "without

due process," etc., under the rule most clearly established in:

Muhlker v. *Harlem, etc., R. R.*, 197 U. S. 544.

Great Southern Hotel Co. v. *Jones*, 193 U. S. 532.

For, the proceeding here was in effect a proceeding to take "property" on behalf of the State itself or of one of its constituted authorities; and in such a case, even though there has been an actual trial, regular on its face, this court will review the proceedings where it is claimed that a definite property right has been *actually* taken without compensation.

C. B. & Q. R. R. v. *Chicago*, 166 U. S. 226.

(The rules of these cases are so well known to the court that they are not repeated in the brief below.)

Specification of Errors.

The assignments of error repeat in varying language the claim that the decision of the Supreme Court of Illinois infringes the "non-impairment of contract," the "due process," and "equal protection" clauses of the Federal Constitution. (138-9.) That is to say:

First. That the Supreme Court of Illinois erred in deciding, (1), that the claim of damages to the property of plaintiffs was subject to an allowance of benefits, if any, arising from the elevated railroad or improvement in question taken as a whole, or from the conveniences or facilities furnished thereby; and (2), in deciding that Sections 12 and 13 of Article II of the Illinois Constitution did not and

(3), that Section 9 of the Eminent Domain Statute of Illinois, namely, of Chapter 47 of the Revised Statutes of Illinois, did not constitute a guaranty against any such allowance; and that such rulings and judgment denying the claim of plaintiffs constitute

(a) An impairment of contract contrary to the "First" paragraph of "§10" of "Article I" of the Constitution of the United States, providing that "No state * * * shall pass any * * * law impairing the obligation of contracts";

(b) A deprivation of appellants of their said property without due process of law, contrary to "§1" of the Fourteenth—"XIV"—Amendment to said Constitution, which provides: "Nor shall any state deprive any person of life, liberty or property without due process of law"; and

(c) They are in conflict with and contrary to the provision in said last quoted section, which provides: "Nor shall any state * * * deny to any person within its jurisdiction the equal protection of the laws."

Or (the same thing stated in another way): That the said Supreme Court erred in denying the claim of plaintiffs that the said judgment of the Superior Court of Cook County, constituted an infringement severally of each of said clauses of the Federal Constitution.

(Ass'ts of error Nos. 4 to 10, p. 323-4.)

Second. That the said Supreme Court erred in affirming the action of the trial court in allowing evidence (a) as to values of the property in question after the road had been established; (b) sales of other property in the neighborhood during said subsequent period; (c) estimates of experts of the mar-

ket effect of said elevated road upon the value of the property for such eight year period after the establishment of the road; (d) evidence of the number of passengers who had paid fare at the nearby station, as well as other stations on the entire "Loop" for said series of eight years or for any one of them or portion thereof, (e), evidence of the total number of passengers who had paid fare on all the elevated roads in Chicago for said series of years.

And that by its said actions, rulings and judgment the said Supreme Court violated, infringed and denied the said constitutional rights of the plaintiffs hereinabove specified in the preceding or "First" specification of error herein and each of them. (Ass'ts of error Nos. 12 (a) to (g), 325-6.)

Third. That the said Supreme Court erred in affirming the action of the trial court in its giving and refusing of instructions, viz.:

(a) In refusing plaintiffs' tendered instructions Nos. 7, 8, 9 and 10 of "Refused" instructions and each of them (p. 295, tendered, p. 280).

(No. 7 is a request for the entire exclusion of "General benefits"; Nos. 8, 9 and 10 are the instructions tendered in the alternative that No. 7 should be refused, No. 8 referring to "station" or *special* travel facilities, No. 9 to the "burden of proof," and No. 10 to limiting the consideration of the jury to elements "capable of estimation in dollars and cents."

(b) In modifying certain instructions tendered by plaintiffs: that is, in substituting in "given" instructions Nos. 8, 9, 10 and 11 the term of formula of "damages from the construction, *maintenance* and

operation of the railroad" for "damages from the *construction* of the railroad for railroad *purposes*" as used in those tendered (289 and 279).

(c) In giving certain instructions on behalf of defendants, namely, instructions Nos. 12 to 19, inclusive, 21 and 22, and each of them (291-3), (which in varying terms as shown in above "outline," included the element of "travel benefits" and "neighborhood" benefits, and which defined the inquiry to *extend beyond a physical injury* "scope," and to include all effect "from the construction, *maintenance* and *operation* of said railroad," and in No. 16 brought the benefits down to time of trial, etc.).

(d) In denying plaintiffs' request (p. 301) for a special finding on the question of "direct, proximate and physical effect" (said request being No. 11 of "Refused" instructions).

(e) The instructions given at the instance of defendants are also as a whole prolix, specious, argumentative and confusing, and applied to the mass of speculating and confusing testimony rendered the whole trial oppressive and abortive.

And that by its said actions, rulings and judgment the said Supreme Court violated, infringed, and denied the said constitutional rights of the plaintiffs hereinabove specified in the "First" specification of error herein, and each of them. (304, 310, 325.)

Fourth. For that by the action, opinion, ruling and judgment of the Supreme Court of Illinois herein in sustaining and affirming the action, rulings, and each of them, and judgment of the Superior Court of Cook County herein, the State of Illinois has, in ef-

fect, since the said William A. McCoy purchased and acquired the said property in question, passed or established a law impairing the obligation of the contract of said McCoy for the purchase of said property and his contract right as owner of said property; all in violation of said "First" paragraph of "§10" of "Article I" of the Constitution of the United States; and therein the Supreme Court of Illinois erred in its said rulings and judgment herein.

Fifth. For that in and by the rulings and each of them and judgment of said Supreme Court of Illinois in said specifications above mentioned, the State of Illinois has denied to the plaintiffs in error the equal protection of laws, in violation of Section 1 of said Fourteenth Amendment; and in and for that the Supreme Court of Illinois erred in its said rulings and judgment.

———o———

We submit the following

Chronology.

1870—Present Constitution of Illinois adopted.

1872—Eminent Domain statute in question passed.

1882—McCoy purchased the property in question.

1894—Stickney case opinion rendered (150 Ill. 362).

1896—Ordinance passed for construction (on Van Buren street) of the Loop Railroad.

1897—Loop Railroad actually constructed (put in operation October 3d).

1902—Present action begun.

1903—The test case of *Aldis* v. *Union Elevated R. R. Co., etc.,* decided by the Illinois Supreme

Court, sustaining the legal right of abutters to sue, and if damaged, recover. (203 Ill. 567.)

1914—Case at bar tried in Superior Court Cook County.

1916—Case at bar decided in Supreme Court of Illinois.

BRAND V. UNION ELEVATED R. R. CO., 238 U. S. 586.

In this late case the plaintiff, Brand (represented by one of the undersigned counsel), had submitted his case in the trial court in Chicago practically on the testimony of one witness and the view of the premises and "L" structure by the jury.

The witness gave evidence of the character and location of the premises, their street and alley easements, their value, their "ante-loop" rental, etc.; evidence of the construction of the "L" structure, its mode of operation, the physical obstruction to access to the premises, loss of light, the great noise of trains, etc.; evidence of some loss of rents immediately after the "L" structure had been built, etc.

He then gave evidence that just about the time the "Loop" road had been completed and put into operation there had been a great *revival in business* in Chicago and throughout the country, generally spoken of as a "boom," *and* that there had been a *general advance in the value of real estate* throughout the city.

His witness then gave as his *"estimate"* that the premises in question—*i. e.*, the *ground* alone—were worth about $4,800 per foot before the "L" road had commenced building (in 1895), and that for *four years* after its completion *i. e.*, down to October,

1901, a period of about *six years*, it had continued to remain at the same value. This, *in spite of* the "boom" in business and the general advance of real estate values in the city, and of the large increase in the population of the city, etc.

Plaintiff then claimed that a *physical interference* with the user of the property appeared from the *view* of the jury *alone* (or at least that the court could not say it did *not*), and if this were not true that then it certainly appeared from such view *and* from the description given of the structure and the mode of its operation, etc. But that *independently* of this, it also appeared from the *oral testimony* as to such physical effects and inconveniences.

The trial court ruled that upon this showing there was *no proof of damage because* of the *estimate* of the single witness that the property, *i. e.*, the *ground* value, was worth as much after the road had been constructed as before. And then, assuming this as *conclusive* evidence *of no reduction in value*, held that plaintiff's claim was in effect for "a *failure to appreciate in value*" and then gave a peremptory instruction for defendants.

The trial judge seemed not to realize that if the property *was due to advance* in value for these several years, by reason of "boom" times, the large increase of population in the city and the general advance of real estate in the neighborhood—which latter *naturally resulted* therefrom—not only could the jury have found *special or physical* damage for the plaintiff, but that it was by such situation *alone conclusively proven to have occurred;* and that even though the jury should allow for and credit general benefits from increased "L" travel—no matter *how*

they estimated or *guessed* at them—they *might* still have found that these did not fully offset special damage, and thus have found a net amount for plaintiff.

Now when the case had been taken to the Appellate Court of Illinois, that court could have reversed without deciding the issue of general benefits; that is, by ruling that even though a jury should consider them, such general benefits might not equal their estimate of proven physical damage, and hence the cause should go back for this reason *alone*.

But it was also true that whether or not such general benefits were considered or allowed for, the *action* of the trial court had infringed plaintiff's constitutional right to a *trial by jury* of his claim for damages.

Plaintiff's counsel therefore assumed that he had a right to withdraw all such assignments of error as would simply leave open the issue of such constitutional rights; and therefore in the Appellate Court formally made the concession and "delimited" his rights, as per the quotation in the majority opinion of Mr. Justice McReynolds.

Note: That if the first part of the concession be taken alone and by itself, the plaintiff *might* have been successfully thrown out of court by reason of the technical vagueness of the language as to whether the property was worth "as much with the *railroad* constructed as without it"—that is, the term "railroad," *might* have been construed to have referred *not* to the entire road, but merely to that part lying within the scope of physical injury, i. e., the territorial scope of lot and easements. But the

sense in which plaintiff used such term "railroad" is shown by the second clause, viz.: that *"differently worded"* he meant that *"facilities* furnished by the improvement" (the entire railroad) "must be excluded." He thus explained the prior clause as referring to the *entire* railroad or public "improvement."

Plaintiff's position on the record as thus presented was this:

First, that the trial court had erred *in taking the cause from the jury* when there was plenty of evidence of *physical damage; second,* that a mere *estimate* of one witness of "no change" in market value did not prove that there had been no such advance in market value; *third,* that *even if* there had been no such change, there still was evidence of *physical damage* which would have reduced the value of the premises had not the same been sustained by *other* and favorable market elements *entirely independent* of the entire road; that is, that a "failure to appreciate in value" was *directly* due to the *direct physical damage;* and *fourth,* that, although claiming that the indirect travel benefits could not (humanly at least) be estimated, yet *conceding* for the purposes of the case that these benefits had *actually offset* the physical damage, he was entitled to have them ignored or excluded and thus reserved to himself as his own; and therefore that the cause should have been submitted to the jury.

The whole record of the plaintiff, therefore, as finally delimited, was to concede for the purposes of that case a judgment against him *if* and only if the reviewing court should hold that any allowance

of general travel benefits did not infringe his constitutional rights, and did not in fact take his property without "due process," etc.

But, as we analyze its ruling, the court escaped a review of the record in this way: By holding, *first*, that when we conceded that the property "was worth as much *with* the" (entire) "improvement as *without* it" (a concession which would of course be treated as if made in the trial court at the close of the evidence) we of necessity conceded no damage, *unless* there was an *enhancing* element of travel benefits present or involved in the record; *second*, that there was no *direct* testimony or estimate in respect to such element; *third*, that the presence of such element in the situation would not be presumed; and hence, *fourth*, that on this state of the record there could be no inference that the jury *would* consider or *attempt* to consider such an element which was "impossible of ascertainment."

In other words: Since general benefits are "something impossible of ascertainment," the trial court did not err in refusing to instruct the jury not to *attempt* to estimate them *because* it could safely be assumed that the jury would *not try* to do the impossible.

While, therefore, the court declined to consider "the broad questions discussed in argument," or the *full* merits of the argument, its action in declining to review was based, and was of necessity based, upon a ruling upon *one* of the two chief branches of the merits, viz.: (1), that general benefits *are "impossible of ascertainment,"* and also (2), that they were so indirect and uncertain that no enhancement in value by reason of them would be presumed.

Four of the justices, speaking through Mr. Justice Day, dissented from the majority opinion, holding that there was evidence of a physical damage to the property, "and of a substantial special injury" thereto, etc., "undoubtedly developed by the view of the premises by the jury," etc. And the opinion then fully sustains the first and broadest claim made by plaintiff in error (the first hereinaboye given in "Plaintiffs' Case in Outline") to the effect that any attempt to charge him with a general benefit, *per se*, infringed his constitutional rights.

A BRIEF OF THE ARGUMENT.

Preliminary.

THE TRUE RULE.

Notwithstanding the former wide divergence of judicial opinion in eminent domain cases as to "general" and "special" benefits, the whole matter primarily is one of substantive law and of universal application throughout the states. For, all of the constitutional provisions under this head, while differently phrased aim at securing merely "just compensation" for "property taken for public use." Our efforts should be towards closing up this margin of difference and establishing a uniform system symmetrically just.

We submit the following as a sound proposition of substantive law fully proven *infra*, and here stated simply to be kept clearly in mind.

General market benefit common to a neighborhood or district specially served by a public work cannot be offset to or deducted from the direct, proximate and physical damage to a lot accruing from that portion of the structure erected in an adjoining street, i. e., within that portion of the street in or over which the lot has easements.

In other words, in assessing damages to a lot caused by the erection of a public work, the

inquiry is held down to the physical scope of lot—and—easements, i. e., the scope of direct effect upon the actual use of lot and easements.

In other words, the Illinois statute simply calls for what has now long been established as the true rule in assessing damages in abutters' cases, viz.:

(1) Take the value of the property as it existed immediately before or without the public structure;

(2) Consider how that *structure as operated* immediately in front of the property and *within the zone of easement rights* will *actually interfere with* the *use and enjoyment* of the lot; then

(3) Estimate the damage to the market value *caused by such interference,* that is, from the *fact* that its actual use *will always be* so interfered with.

(As per texts and cases cited *infra.*)

This involves, of course, the exclusion of all market benefit which might come to the property through the general aid to prosperity of the *people* or to the *business* of the neighborhood or district by reason of facilities furnished by the improvement in *its entirety;* and hence the estimate is to be made as if *means of access* to such facilities (as in case of a railroad depot), were too far away to furnish any appreciable convenience to the premises *or neighborhood* in question—the physical nuisance suffered remaining the same.

The scope of inquiry is frequently referred to as the "physical scope," or the scope of "actual use" or of "direct and physical effects," *i. e.,* those effects which will be suffered (if damaging) or enjoyed

(if beneficial) while one is *in the actual use* of his premises.

The general course of decisions in Illinois on the constitutional clause of "just compensation" is reviewed at length by Mr. Justice Mulkey, (a judge of great acumen) in the case of *Rigney* v. *City of Chicago*, 102 Ill. 64, cited *supra* (decided in 1881).

The earlier constitution of Illinois (1848) had provided only for just compensation where "property" had been *"taken"* for public use, etc.

The rulings of the Illinois Supreme Court upon this clause had been to the effect that where the tract or lot *proper* had either been partly or wholly physically appropriated, *or* its use physically affected by works established outside of *the lot proper*—whether on abutting streets or any where else—by means of which *the lot proper* was caused to be overflowed, or cinders and dirt and dust, etc., were constantly cast upon it, or extraordinary vibrations were given to buildings or improvements upon it, etc., etc., in such case there was "a physical interference" with the lot, that is, with its use, and "property" was in such cases "taken."

But they *denied* the right of recovery to an abutter where the nuisance, whatever it was, was confined to the public street in front of the lot and did not affect one in the *actual use* of—i. e., *when he was upon—the lot proper*. The new constitution (of 1870) changed this, and expressly provided compensation for "property taken *or damaged.*" And it was then ruled that this new term allowed damages for impeding of *access to* the lot, and for other like *easement* effects.

Mr. Justice Mulkey points out the error of the earlier rulings upon the clause "property *taken*" in not recognizing that if the *right of dominion* over premises (including of course its easements) had been physically *interfered with*, in such case the "property" of the owner—to the extent of this actual interference—had been "taken" in a constitutional sense; that such an interference *was* a direct and "physical" one; and that therefore, under a *proper* construction of the 1848 constitution, it would *never have been necessary* to add the words *"or damaged,"* etc.

This able and luminous *Rigney* case opinion, has become a landmark in the law of Illinois and that of the country at large.

THE CONFUSION.

This issue of "general benefits" in eminent domain cases has had a most painful history, and has made a heavy draft on American court economy. It in fact has been a real *blight* upon the cause of general "property" justice.

The courts of every state in the Union have wrestled with the subject, and in most instances have escaped the mischief by excluding at the outset this speculative element.

But in the gradual intensifying of conditions, and in the growing industrial complexity of the great cities of the country, and under cover of this complexity, the elusive element has found a lair, and in several states has even yet to be effectually dislodged.

A significant object lesson is shown in Demarest's

review of the New York elevated railroad cases. At the outset in his preface, he refers to the great volume of litigation which arose first from attempts to consider the *easements* of a lot separately from the right of proprietorship over the *lot proper*, and secondly, and chiefly, by reason of the great confusion arising from bringing into the assessment of damages the subject of benefits other than those which are direct and physical. (Over 200 N. Y. decisions cited—the product of this confusion as early as 1894!)

The courts there held that evidence of *values* before and after the work was constructed *and also* evidence of increased travel, etc., was competent, but evidence as to the *effect* of the work (including "travel" benefits) measured in money was not, and that *expert witnesses* giving their opinion as to the latter were thereby invading the province of the jury.

In other words, the New York courts admit the *speculative character* of the benefits which they allowed *to come into* the case, and then condemn the testimony on the ground that it *is* speculative,—*and then leave the speculation to the jury!* (Demarest, pp. 157-9.)

The courts there finally adopted a set of forced rules, which resulted *practically* in leaving out of view, at least in the main, these neighborhood or general travel facilities benefits.

(1) They ruled that the structure in the street was at least a *technical* invasion of the street easement or rights of the abutter.

(2) They held that the "special" benefits from increased travel must not only be "special" but also

must be "*peculiar*," etc. (a special "station" benefit); and Mr. Demarest finally concludes:

> "This meaning, then, would seem to be that the benefit will be special if it be possible truly to characterize it by the term '*specific.*'" (p. 180.)

(3) They also seem to have been forced by the confusion-producing effects of this "travel" element to put the *burden* upon the railroad company of proving the *specific* market increase which was claimed to have occurred from such element—in reduction of direct damage. They ruled that such "peculiar benefits must not be presumed, but must be proven."

> *Israel* v. *Manhattan R. Co.*, 158 N. Y. 624 (633), and other cases cited in 15 Cyc. 774, Note 4.

(4) It is well known that the property owners in the built-up portions of New York finally recovered against the roads; and it would seem that their damages were usually gauged by just about the amount that property in general upon the structure-blighted street had *failed to advance* when compared with property on nearby lateral streets, whose general character had been the same before the road had been built. (This is *practically* the measure of *physical effect.*)

> *Israel* v. *Manhattan R. Co., supra.*
> *Shepard* v. *Same*, 169 N. Y. 160.

After commenting upon the hopelessly fluctuating and overlapping decisions, *pro* and *con*, upon this vague and shifting area of confused elements indirectly producing market effect, Mr. Demarest finally

condemns the New York decisions allowing them, and says (p. 185):

> *"They repealed the statute"*—a statute which clearly, though in no such sweeping terms as the Illinois statute, provided for the exclusion of "general benefits."

In this way the courts of New York (and those of several other states) which have allowed evidence of this mischief-breeding element to *come into* such trials have been forced in turn to *crowd it out*, viz.: by making the party asserting such benefit *prove* it, and the *"specific" amount* of it—which of course it can never do.

This usually resulted in allowing the item of *direct physical damage* to stand entirely or practically as the only proven item—because the only one *capable* of proof—and this is why the New York "L" cases usually resulted in verdicts for the abutters, though at awful cost.

The object lesson of the New York trials had its effect upon the legislation of Massachusetts, when that state came to legislating for the prospective elevated road in Boston, about the year 1894. In fact, it took all the resourcefulness of a Ben Butler (according to professional rumor) to keep the legislature from excluding entirely the element of general benefits. But it was finally provided that the inquiry in abutter's cases should be limited to the question:

"First. Has the petitioner's estate been damaged more than it has been benefited or improved in value by reason of the *location*, construction, maintenance *or operation* of said Railway"?

"Second. If so, how much?"

The Massachusetts Supreme Court construed this statute as meaning (1), that such benefits only as were peculiar to the property and *not shared in by property in the city at large* should be reckoned in making the inquiry as to abutters' damages; (2) that any *damage* which the property suffered not shared in by property the city at large should be accorded the abutter. Then it held that the *scope* of such inquiry was *wider* than that involved in a "taking" or "damaging" as allowed for in ordinary condemnation cases, and *narrower* than that "neighborhood" or "district" scope which defined "betterment" special assessments. That is, it held to a neighborhood or "vicinity" or "vicinage" scope which would define a *common law action brought against an individual* for a neighborhood noise or other nuisance." *Baker* v. *Boston Elev. Ry. Co.*, 183 Mass. 178.

But it was soon found that even such a rule was anything but benign.

And a sample of cou t economy (?) and of "justice freely and without delay"(?) is shown in the sample "L" case of *Peabody* v. *Boston El. Ry.* 191 Mass. 513,—where a "*vast*" amount of evidence was taken, and the immediate market effect was attempted to be estimated as here in part by the process of *counting the passengers* who had taken and left trains at the one station immediately in front of the premises involved.

As to Illinois, probably in no state of the Union has this doctrine of "general benefits" had such a unique career of error or such mischievous results.

In the laudable desire on the part of the courts to

encourage railroad building, the people of that state were compelled to have passed *three different statutes*, expressly inhibiting a consideration of such benefits in eminent domain inquiries; and the fluctuating fate of the property owners' cases as to this element is shown by the following course of events (more particularly scheduled in Point V, *infra*), viz.:

The *first* statute, a general "Internal Improvement Act," passed in 1833, expressly limited benefits to such as the land will derive "from the *construction* of such road;" and it was properly interpreted in *State* v. *Evans*, 3 Ill. 208, to exclude benefits from its *"location," i. e.*, neighborhood benefits.

This ruling was later reversed in the Alton case, 14 Ill. 190, and the property owner was charged with benefits for *"additional facilities* for taking the product of the land to *market,"* etc.

A *second* statute was then passed in 1852, more *explicitly* excluding such general neighborhood benefits. (*Infra*, p. 85.) In spite of this a decision was rendered in *Hayes* v. *R. R.*, 54 Ill. 373, *infra*, construing this act, wherein the court—while applying its plain terms as to an inquiry of value of "part taken"—nevertheless taxed and charged the property owner *with* such offset in respect to "damages to the remainder" and in suits brought by abutters.

A *third* statute was then passed in 1872 (quoted *supra*, Section 9), *again* expressly excluding such neighborhood benefits to any property "taken *or* damaged," and *in language probably the most sweeping and explicit of any used in American statutes on this subject in language 'too plain to bear construction.'"*

Twenty years' uniform construction of this stat-

ute and re-affirmance of its plain terms then followed.

After which, and in 1894 an attempt was made in the *Stickney* case to reverse this entire line of cases —an opinion squarely contradictory on its face— which the Illinois Supreme Court is now attempting and apparently determined to follow, *i. e.*, if it can follow a contradiction.

In Chicago the situation has lately become "confusion worse confounded"; and the anomalous situation is largely revealed in the affidavits filed upon the motion to advance which might probably be recognizable here as an item of local, professional or court history. It in fact seems almost unbelievable.

In the first place, instead of recognizing the mischief and the *lesson* from the New York and Boston experience, the Supreme Court of Illinois has attempted to adhere blindly to the rule of *stare decisis*, and to blindly follow the mischievous and contradictory ruling of *R. R.* v. *Stickney*, 150 Ill. 362.

Not only this, but that court has absolutely refused to attempt to *control* or *localize* the mischief in the element, to any substantial extent, as was done in New York and Massachusetts. It has in fact not only given full play to the same, but has *actually broadened* the rules of evidence and thus *multiplied* the speculation *inherent* in the element itself; and has allowed "estimates," not only of a *fusion* of elements, but has allowed this fusion and confusion to be *extended over a series of years after* the public work has been established. In other words, such "estimates" have covered a *veritable fermentation*

of market elements from which the road witnesses, as in this case, have professed to be able to extract the *one* element of "travel benefits," and estimate it.

It is no wonder, then, that in spite of the number of abutters' suits that must naturally have been commenced for damages from this "Loop" railroad, jury disagreements were the rule in the abnormally long trials which first took place, and that the first verdict was rendered as late as 1910, some *seven* years after the *Aldis* test case had been decided in the Illinois Supreme Court.

But this is not all. The Supreme Court of Illinois—probably from a sort of judicial impatience at the frequency with which this hydra-headed monster has shown its head of late years—has been led to attempt a strike for relief *by discouraging* this *whole class* of eminent domain cases; and moderate judgments lately obtained by property owners *in spite of* the abnormal handicaps from the court's having given *carte blanche* to the mischief by its ultra-broad rulings as to evidence, etc., etc., *have been reversed* by that court in a manner and in a situation believed to be without precedent in the history of eminent domain law.

See *Geohegan* v. *Union Elevated R. R. Co.*, 266 Ill. 482.

Brand v. *Same*, 277 Ill. 356.

(This latter case is not the same as *Brand* v. *Union Elevated R. R. Co.*, 238 U. S. 586, analyzed *supra*, but involved a property on Van Buren street, several hundred feet east of the McCoy Hotel.)

That is to say: The Supreme Court of Illinois in the Geohegan case *squarely and explicitly refused*

to control the element of general benefits by placing the *burden* of proving them on the railroad company and by *localizing* the general benefits element to a "station" or "*specific*" or "*special travel*" effect or "to such elements which were capable of estimation in dollars and cents," etc. That is, it reversed a judgment in the abutter's favor because the trial court in its instructions had so placed the burden of proof, and had so localized the issue.

While in the second or Brand case that court *again reversed* a judgment ($5,800), because, as it held, the evidence of the experts of defendant as to the one element of indirect travel effect *outweighed* that of the *direct physical* effects and the oral testimony of one witness as to results from the work—results *obvious and undeniable.* There was no dispute but that the "L" structure had been built and was being operated immediately in front of the windows of plaintiff's building; and yet, as it was held, the *evidence of damage* was overwhelmed with the "estimates."

Even in the case at bar the court likewise remarked that "the evidence in the case would not have sustained a verdict for plaintiff." This remark, we think, can be best appreciated with the photos in hand.

Thus that court seems to have served notice on counsel for the plaintiffs in these cases that it would not only *refuse to protect* the property owner from such *burdensome* and *speculative* trials, but *would reverse these plainly meritorious judgments* as often as they were obtained and the defending companies chose to bring them to that court.

The situation is distressing beyond measure, and calls loudly for relief.

I.

Eminent Domain Elements.

The question of how damages from public works are to be assessed, has caused as much, if not far more, confusion in the law of eminent domain than the historic issue over the term "property taken."

The chief trouble in the matter arose from the courts—in inquiring as to the effect upon the particular lot from "the work" or "the improvement" or the "railroad"—not realizing that in these damage cases they were **not concerned** with the **entire** work or improvement, **but only with such portion thereof as had been or was to be constructed within the limits, or scope of the lot and its easements—i. e., with that portion of the work as operated capable of producing a physical effect upon the actual use of the lot.**

This scope—the extreme *territorial limit* of private rights,—is often referred to as the "physical scope" of the property. While courts have differed as to what this scope is, it is now usually considered in case of an ordinary city lot to extend over that portion of abutting street (or alley) necessary to "give an outlet to the general system of streets in the neighborhood." Ordinarily—at least in many jurisdictions—the easement of access to such lot covers only the block upon which the lot abuts, or it extends only to the nearest intersecting street, although a corner lot is often held to have a special interest in a *cul de sac* right opposite. (Lewis, §191.)

1. The term "property" as applied to "real estate" is capable of being used in three different senses:

1st: The physical *land*—which is, strictly speaking, not property, but the *subject* of property.

2nd: The *right of dominion over* the physical land; and

3rd: The *value* of such right of dominion.

It is in the *second* sense that the term is used in constitutional provisions; and the "taking" of property there referred to means simply a *physical interference* for a public use with such *right of dominion or user*. The *extent* to which the *market value of* such right of dominion is diminished *by such physical interference* is the *measure* in money of the taking—and of the recovery.

Rigney v. *Chicago*, 102 Ill. 64 (77-8).
Eaton v. *R. R.*, 51 N. H. 504.

2. The right of dominion over a lot is such a dominion over the lot *and its easements*. These are inseparable; and this right is an entirety—*a unit*.

Lewis Em. Dom., 3rd Ed., §693, p. 1198.

3. The permanent interference with any part of the *subject* of this right or unit of ownership—whether by obstructing a part of the lot proper, or other land or areas in or over which its easements extend—is a *taking* of a part of this "property"—this unit or right of enjoyment.

The process of assessing damages in any such case involves in effect the comparison of *two objects*, and then a comparison of the *value* of the right of dominion over each.

In effect one unit of ownership is destroyed and another unit substituted.

4. The *damage* in such case is a *unit;* and the

practice, (which obtains in Illinois and one or two other states), in cases where a part of the lot proper is appropriated, of dividing such damage into *two* items, viz., into one allowance for "part taken," and another for "damages to the remainder," is illogical, usually impracticable and in any event useless.

Lewis, §693, p. 1197,8.

Bloomington v. *Miller*, 84 Ill. 621 (623).

This practice largely, if not chiefly, accounts for the division and confusion in opinions upon the question of "general" and "special" benefits.

5. There are *two classes of market effects* on land which usually flow from the establishment of a public improvement, viz.:

The first is that which arises from *direct, proximate* and *physical* interference with the use of a lot and its easements.

The second is that which occurs to the lot in consequence of the *establishment* of the public work in its *entirety, i. e.,* from the establishment of the *enterprise, i. e.,* from the public facilities furnished by it *to the community* or neighborhood at large.

The former usually embraces or occurs from that *portion* or the work only which is laid *within the limits or scope of the lot and adjoining land appurtenant to it*—that is *within the scope of private interest.* Occasionally a physical damage may occur from the particular plan of construction of a portion of the work lying beyond these limits, as where an embankment or "fill" in the general neighborhood may obstruct a water course and cause a lot some distance away from the "fill" to become flooded.

6. The market effect which flows from, or rather occurs *in consequence of*, the establishment of the work in its *entirety*, is no more "direct, proximate and physical" than is a market advance of property in a village or city which accrues in consequence of the location of a factory in the neighborhood, the annexation of territory to a city or village, the purchase of a particular lot by a wealthy citizen for his residence, an ordinance limiting the height of buildings, a change in a law of taxation, a change in the public currency, or a dozen other like incidents, etc.

7. *a.* "Such benefits are *uncertain, incapable of estimation and future.*"

Beveridge v. *Lewis*, 137 Calif. 619 (624).

b. They are also "indirect and remote," etc.

R. R. v. *Slingerland*, 101 Minn. 488.

c. They are a **growth.** They do not "instantly *and* appreciably" affect the *use* and hence do not *directly* affect the *value* of the land.

d. The amount of travel—and hence of the so-called "benefit"—depends upon the length of the road, outside connections, and the state of produce markets and of finances, and a variety of other elements and features.

e. It is primarily a *benefit* to the *business* of the *neighborhood;* and any attempt to estimate land value "impulses" from this must *commence* with a *total district* benefit, and then a "distributive" benefit estimated as to each unit of property therein—as in cases of a local assessment.

So far, then, as the effect is *instantaneous*—a mere general neighborhood market *impulse*—it does not exist in estimation.

So far as any attempt to estimate it by considering *future* travel, it never can be thought of without (1) considering that if the need had become acute, some *other* substitute in the neighborhood would have been provided by the state or municipality in due course, because it is a *duty* for it so to provide (pp. 11 and 12, *infra*); and (2) such an "estimate" is more than ever a mere hopeless guessing.

8. The advance in market value of property in a district for whose use primarily a public work is established is properly a *"local"* benefit, and *not* a *"special"* benefit—whether the district served be great or small. If the improvement be so local *and* of *such a character* as to permit of a local or "special" assessment, property actually benefited can be assessed—*not* for the *full benefit* received, but only —for its due *proportion of cost* of the improvement.

The benefit for which any specific lot or tract can be so assessed, though often called "special," is *not* the special benefit involved in a *taking*. In the latter, *all* "direct, proximate and physical" effects, i. e., **both** *damaging and beneficial,* **constitute a blend.** And the *net* **result** as to whether the work may be damaging or not determines *whether* there has been a taking *vel non*.

The confusion of these "benefit" and "damage" terms from time to time, while the eminent domain and local assessment systems were growing up side by side at the same time, is largely responsible for the division of authority upon the main question *supra*.

9. A *"special benefit"* then as used in eminent domain proceedings arises:

(a) Where the *net* "direct, proximate and physical" *effect* from the structure as planned and permanently built, is *beneficial* (as a "special damage" arises when such net result is *damaging*).

Or (b) it may be also by reason of some specific and special *privilege* or easement "*directly and proximately*" conferred by the work upon abutting property, as giving *access* to a public street, or access to an abutting railroad by means of a switch track privilege (where the right to maintain it is specifically granted, or assured, by state law). Lewis Em. Dom., 3rd Ed., §702, 3.

These latter (b), though capable of being separated *in estimate* from direct physical damage (a), are ordinarily to be considered in connection therewith and as items to be credited to the road as direct or *special* benefits.

10. The true rule of ascertaining damages where a portion only of the lot proper is taken, or where its easements alone are interfered with, is this:

(1) Estimate the market value of the lot, before improvement, *including*, of course, its easements; (2) consider how the construction and operation will directly and physically *interfere* with the *actual use or enjoyment* of lot *and* easements, and (3) estimate *the damage to* or reduction of such market value *from such interference, i. e.*, from the *fact* that the actual use and enjoyment *will always* be so interfered with.

Lewis, §693, p. 1199.

Louisville & N. R. R. v. *Ingram* (Ky.), 14 S. W. 534.

Lambeth v. *Power Co.*, 152 N. C. 371.

11. One can never *attempt* to estimate the travel benefit or general benefit from a public facilities improvement or "enterprise," occurring to a particular lot, without considering that *if* the particular improvement had been sorely needed *some other* need-filling improvement or facility would have been provided for in ordinary course, that is:

12. Public improvements are made *primarily to fill a need* of some particular community, district or neighborhood; **and one of the functions of government is to provide for** (and at the *common expense or* for the *common profit*) *the* **growth** *and* **development** *of its communities in the way of authorizing or constructing public works.* (*Manton-ville, etc., R. R. Co.* v. *Slingerland,* 101 Minn. 490.) A system which compels abutting owners or others to suffer physical damage from such works without compensation or deprives them of their share of benefits therein, cannot be just. Hence, (as more fully shown in the next point):

To exclude any one property owner from sharing in the general local benefit is to deny him the "equal protection of the laws," *or, —the same thing*—**to take his property without "due process of law."**

II.

The Injustice of the Rule Attacked.

or

The Rights and Equities of the Property owner in the Improvement.

1. As a property holder *of the district* specially served by the public improvement, the owner of *property physically affected has an interest in the improvement.*

2. *To deprive him* of such interest, directly or indirectly, is "to deny him *the equal protection of the laws.*"

> *Beveridge* v. *Lewis*, 137 Cal. 619 (625).
>
> "It would be an *unjust discrimination* against this land owner to require him to *pay for the privilege of paying the plaintiff*" (the Ry. Co.) "*for the transportation of his freight.*"
>
> *Mantonville etc. Ry. Co.* v. *Slingerland*, 101 Minn. (p. 490):
>
> *Keithsburg etc. R. R. Co.* v. *Henry*, 79 Ill. 290 (294), *supra.*

(This *constitutional* feature entirely overlooked in nearly all of the earlier cases.)

3. One of the very bases of the *right of the public authorities to grant* to private persons or corporations the *right* of eminent domain *is the prospective benefit in market value to the property in the district to be served.*

> "That the *railway property* and stock increase in value, and that *the community* through which the railroad passes finds *it lands* made more valuable and its property increased *is the accomplishment of the very purposes for which*

the sovereign state conferred these franchises and privileges upon corporations of this class."

Mantonville etc. R. R. Co. v. *Slingerland, supra.*

4. *All* public franchises of this nature are granted *in part by the consent of the abutting property owner,* as well as of others *idem.*

No such consent of himself or his representatives *can be implied* upon the basis that he and others in like situation shall be *excluded* from sharing in the enterprise *as* a property owner; or that he and such co-owners are to bear the burden for the benefit of others exclusively by suffering the *physical character* of their premises to be changed and its future possibly affected for all time—without compensation.

5. The discrimination made by offsetting general benefits to the special damage to abutters operates in effect to give the *private* corporation the right to *permanently change the physical character* of the *abutters' premises* (*i. e., to afflict it with a nuisance*) *without paying anything therefor.*

CARTWRIGHT, J., in dissenting opinion in the Brand case, 258 Ill. 133 (144) *supra.*

6. There is no public interest which demands such a sacrifice upon the part of the abutting owners, and hence it cannot be defended upon the ground of public duty. Jails, hospitals, fire engine houses may produce market damage. (But the same although often quite marked is *indirect.*) But they belong to *public necessities.* (And even these must account for *direct* damage when their establishment actually invades lots or private easements.) The work here is merely a public *convenience.*

7. Since *neighborhood damage* can not be recovered for (and this is settled even in Illinois, Point IX (2), (a), *infra*), it follows logically that *neighborhood benefits* cannot be charged for.

8. The discrimination against abutters involved in the "inclusion of common benefits" rule has various unhealthy results. Among others, it tends to create unwholesome scrambles among property owners as to where the improvements shall be located and as to who shall bear the burden for the benefit of all. (The one which took place—*i. e.*, which *must naturally* have taken place—as to the location of the Chicago Loop can at least be imagined.)

9. The rule contended for here is definite, simple, and a fitting plank in a complete and *"just" system* of eminent domain procedure; while the other leads to untold mischief and inequity.

10. Since **diversion of traffic** from the neighborhood or from the premises **is no element of damage** in these cases, and is *beyond the scope* of the inquiry, how could **increase of that kind** *of traffic be an element of* **benefit?** (*Chicago* v. *Spoor; Chicago* v. *Jackson,* Point IX, (2), (b), *infra*).

11. (1) The attempt to reduce physical damage by off-setting benefits from the public work, *i. e.*, the *enterprise* (no matter how it is estimated, *i. e., guessed at*), is, after all as shown *supra, assessing the abutter* for the cost of the work. And it could only be founded on the principle of taxation.

Lewis, 3d Ed., §5.

Newby v. *Platte Co.,* 24 Mo. 258.

But a *due proportion of cost* is all that can equitably be taxed, *whenever* cost is taxed *at all. So that*

the rule here attacked is far worse than one which merely discriminates by assessing one class or set of property owners benefitted for the cost, and *not others.*

(2) A public railroad is not a "local improvement," but is of such a general and non-local character as to forbid a local assessment for its cost (unless specially provided for by constitution and statute, etc.) To assess *any benefit at all* for its construction is *illegal and unjust;* while to so assess the *entire* benefit, or to the extent of offsetting physical damage, *is doubly so!*

(3) That large and definite increases in value do gradually *occur* to property from local or neighborhood railroads, and of course usually to *some* extent upon the instant of their *establishment,* is the temptation to courts to carelessly view the gain as unearned and to reconcile them to a denial of damages to near-by or abutting property *physically* damaged. But this should be neutralized by these offsetting considerations:

a. That the property *most benefited* (1) usually *most needs the work,* and (2) usually *furnishes most of the traffic or transportation and profit to the enterprise—i. e.,* to the stockholders and bondholders of the road. This gain is *a necessary result* of the modern concentration of people in small areas—*i. e.,* modern congestion.

b. The railroad in such cases is usually a *bigger nuisance* to such abutting or near-by property and the damage is—and hence the *discrimination* in making them bear the burden for the benefit of others would be—more marked than ever.

12. *The attempt to measure market "benefits" from the improvement, i. e., the* **entire enterprise,** *throws open the trials of these cases to inordinate length and shocking waste.*

And it is just as hard—and just as easy—to estimate the **instantaneous** *market effect (if any) from the establishment of a railroad or other similar work, i. e., from its general facilities upon a single lot or tract of private property, as it is* **to estimate such instantaneous market effect** *upon the* **railroad** *property or* **its** *stock and bonds from the building of* **a store, factory, warehouse, office building, residence or farm house upon a vacant lot or tract** *adjoining the right of way. This reduces the entire process or proceeding to an absurdity.* And

13. The *inevitable result of every trial where this elusive and speculative element is allowed full play as it was in the case at bar, is and ever must be a verdict for defendant—unless the jury absolutely ignores such element, or assumes the impossible, viz., to measure it.*

The principles scheduled above are fully supported by

Lewis 3d Ed., Secs. 693, 702, 703;

And by the following cases selected from a mass:

Beveridge v. *Lewis,* 137 Cal. 619 (625).

Mantonville, etc., Ry. Co. v. *Slingerland,* 101 Minn. 488.

Winona & St. Peter R. R. v. *Waldron,* 11 Minn. 534.

Roberts v. *Commrs. Brown Co.,* 21 Kas. 186 (old Ed. 240).

Pochila v. *Ry. Co.*, 31 Tex. Civ. App. 398.

Hickman v. *City of Kansas*, 120 Mo. 110 (125).

Shimer v. *Easton R. Co.*, 205 Pa. 648.

Heninger v. *Peery*, 102 Va. 896.

Rourke v. *R. R.*, 221 Mo. 46, Syl. 6 (an abutter's case against an "L" road).

And the Illinois cases cited *supra* and *infra*, Points VIII and IX.

By the many "benefit" constitutional clauses and statutes passed in a number of states (Point IV, *infra*).

And by the three Illinois statutes passed in 1833, 1852 and 1872 (Sec. 9).

And by the Illinois local improvement laws, existing before and since the Stickney Case ruling in 1894. (Point IV, *infra.*)

Even in the late Brand case the Illinois Supreme Court again adopts the language of one of its latest cases, *Eldorado, etc., R. R.* v. *Everett*, 225 Ill. 529, to the effect that *"travel facilities" "are not to be taken" into account*, and evidently fails to reognize that this contradicts its conclusion!

III.

The statute in question.

1. It excludes all estimates offset or deduction on account of *any* benefit whatsoever. For,

"No benefits or advantages * * * *shall be* set off or deducted * * * in any such case."

Could the prohibition have been made more sweeping in terms?

2. In fact the language has even to be strained to a definite extent to allow *some special* benefits occurring *immediately* from the construction of the work to be offset or deducted, as for instance, special benefits from street access or switch track access in states where the same accrues as matter of law upon the establishment of a railroad, etc. (There are some states, or at least one, in which a denial of even special and direct effects is the established rule. (Lewis, Sec. 688.)

While to allow market benefit from the improvement as a whole or in its entirety whether we call it "local" or "general" benefit is to doubly violate the plain terms of the statute.

Hence, we say with the Supreme Court of Illinois (*R. R.* v. *Henry*, 79 Ill. 290), that as to the exclusion of *such* benefit, "*the statute is too plain to bear construction.*"

3. Hence, we say that *if the case of plaintiffs in error rested upon the* **statute alone,** and there had been no prior state court construction of the same, the appeal to this court from the judgment rendered here would be well based. For, it would be an appeal from an *arbitrary denial of a right based upon a statute too plain to bear construction*—too plain for any reasonable difference of opinion, while the Illinois Supreme Court had for over 20 years uniformly construed this statute in accordance with its plain terms.

IV.

The whole trend of authority in substantive law and of legislation is to suport the rule of this plain statute.

(1) "The weight of authority is clearly against" the Stickney case ruling.

Lewis, 3rd. Ed., 1909, Sec. 702, p. 1216; and
Beveridge v. *Lewis,* 137 Calif. 619 (623).
Mantonville R. R. v. *Slingerland,* 101 Minn. 488.

"The whole trend of authority is against it."

Kimball v. *Salt Lake City,* 90 Pac. Rep. 398.
Elliott, Roads & Streets, 3d Ed., Vol. 1, §277.

And the many selected cases listed, *infra,* Point VII.

(2) That *all* the *state constitutions,* seven in number, which expressly mention the subject of benefits *exclude these local benefits*—in somewhat narrower language than that of our Section 9, and certainly in *no broader* terms, viz.: they provide for compensation "irrespective of any benefit from *the improvement.*"

Alabama, Art. 13, §57.
Arkansas, Art. 5, §48.
California, Art. 1, §14.
Iowa, Art. 1, §18.
Kansas, Art. 12, §14.
Ohio, Art. 1, §19, Bill of Rights.
Ohio, Art. 13, §5.
Washington, Art. 1, §16.

(3) That *all* state *statutes*—with the possible exception of one or two passed many years ago in the days of railroad domination—*expressly exclude* these local benefits.

(4) That the same rule was permanently settled in England nearly a half century ago, and never *even questioned* since, so far as we can find.

Eagle v. *Charing Cross Ry. Co.*, L. R. 2, C. P. 638. (Although in England the courts make or formerly made the distinction in favor of the "municipal" damaging referred to in the *Sauer* case in 206 U. S. 536. But "the whole current of judicial opinion is sweeping away" the last vestige of this narrow rule. Elliott, 3d Ed., §284.)

V.

Two Illinois Statutes, Prior to Act of 1872.

This while not primarily important here, significantly shows that *twice before* property owners' benefits assured by *specific statutes* of Illinois have been unconsciously construed away by her Supreme Court in whole or in part.

In Section 1 of Act of 1833 (Rev. Laws of Ill., 1833, p. 535), it was provided that the assessors "shall assess the damages which they shall believe such owner or owners will sustain over and above the additional value which such land will derive from the *construction* of such road."

In *State* v. *Evans*, 2 Scam. (3d Ill.) 208, the court held that under this statute the "benefit that will result" to the claimant's land "from the *construction* of the road" (*i. e.*, according to the *plan* and *profile*, etc.) "is to be inquired into, and not that

which may result from its *location.*" This in effect was an attempt to exclude "local" or "neighborhood" market effect and to hold down to a physical effect scope,—although the delimitation is not made very clear.

But in *Alton & S. R. R. Co.* v. *Carpenter,* 14 Ill. 190 (1852), the court greatly and erroneously changed its former rulings in *State* v. *Evans.*

It held that "if additional value is given to the land by the construction of the public work, it matters not whether it be by draining the land which was before wet, by *affording additional facilities for taking its product to market,* or by the general enhancement in the value of the land occasioned by its contiguity to the public work," etc. (Failing to note the *basal distinction* between the italicised element and the other two.)

This case was decided in December, 1852, and on page 193 the court expressly refers to the Act of June 22, 1852, which prohibits the offsetting of "common" benefits or advantages, etc.

It was evidently the claim raised by the railroads in this case in the lower court, viz.: that the land owners should be charged with "facilities" benefits, that had caused the passage of the 1852 Act.

This Act provided for "the assessment of damages which may result from the construction and operation of the road," etc.

> "*Provided,* the said commissioners shall *not estimate* any benefits or advantages which may accrue to land affected *in common* with those adjoining lands on which such road, canal or other improvements *does not pass.*"
>
> Laws of Ill., 1852, p. 148, Sec. 5.

Plainly this was an effort to prohibit the offsetting of market facilities which were *common* to *the entire neighborhood.* (The very language quoted has long been in common use throughout the country in statute and constitution as indicating clearly the dividing line between special and general benefits. Point IV (2), *supra.*) Yet the Supreme Court of Illinois did not so decide.

In the case of *Hayes* v. *R. R.*, 54 Ill. 373, this new 1852 statute was construed to mean that the prohibition of the offset of benefits and advantages *applied only* to the particular "property," that is *the part* of the land which was *actually appropriated* and that in fixing damages to the remainder the "benefits and advantages from the construction and use of the road"—including market of "depot" facilities—were *still* to be taken into consideration and estimated.

Thus, first, the unjust rule of charging the land owner with travel or market facilities was erroneously announced in construing a statute which called for the reverse (as per leading authorities, *supra*). And then after a *second* statute had been passed *expressly* to *prohibit* this in language *still more plain, usual, fit and specific,* the courts had *erred again* and denied its effect, *i. e.,* as to land *"damaged."*

Then the legislature made it *"too plain to bear construction."*

Is another statute needed? How much plainer should the *next* statute be? *How much plainer* could *it be?*

VI.

Cases Based alone on Illinois Constitutional Clause of "Just Compensation."

(That is, cases arising after adoption of 1870 constitution and before 1872 act.) (1874) *Chic., etc., R. R .v. Stein*, 75 Ill. 41.

A claim that *access* to dock property was *impeded* by the erection of a railroad bridge and a protection thereto in the river, right opposite the lot.

The upper court found *as a fact* that such access was not impeded, "that there is no trouble in getting a vessel in and out between the bridge and the dock," etc.

Held also that for such inconvenience from the structure "as might discommode those who may *reside in the vicinity of the route* where the improvement is made, and to some extent damage or lessen in value property," etc., damages could *not* be recovered.

(1876) *Shawneetown* v. *Mason*, 82 Ill. 337.

Action by an abutter against the city for constructing an embankment in the street and causing a radical change in the grade thereof.

It was held (Syl. 6, Opinion, p. 344): "*any general benefit common to all other property affected by the work should not be considered in determining whether the property is benefited as much as injured.*"

(1876) *Elgin* v. *Eaton*, 83 Ill. 535.

Action on the case by Eaton against the City of Elgin, occasioned to a corner lot by a radical change

of grade of both abutting streets *immediately in front* of the lot.

It was held that the cost of changing the grade of the lot to correspond with the street, as one element of damage, should be considered in connection with the fact that the *direct access* to and *egress from* the lot was increased. Citing a prior (*Brereton*) case (p. 536), involving a benefit from increased *direct access.* There was no suggestion by any counsel in the case that the court should allow neighborhood benefits for which the lot could *be assessed* in a local assessment case to probably follow later.

(1878) *Chicago, etc., R. R.* v. *Hall,* 90 Ill. 42.

Action by abutter against railroad company for constructing a railroad in abutting street, in which only *physical damage* was claimed in the way of the road "causing smoke, dust and cinders to be thrown upon his house and lot, thereby depreciating the value of the lot."

It was held:

> "The true measure of damages is the loss sustained by the *nuisance* * * *. *The injury must be physical.*" (Syl. 3, Opinion, p. 46.)

It is seen that these cases in their *facts, language* and *conclusions* are consistent with the *post*—1872 cases, based on constitution *and* statute.

VII.

The Illinois courts uniformly and consistently for a period of over twenty-two years construed the 1872 statute as called for by its plain terms. Such was the settled rule when Mr. McCoy purchased the lots in question in 1882 and 1887.

Preliminary to listing the cases supporting this claim, we refer to:

THE THREE CASES IN THE 70 ILLS. (DECIDED IN 1873).

Chic., etc., R. R. v. *Francis*, 70 Ill. 239: A bill in equity to *enjoin the construction* of the road—*not maintainable in Illinois in any event.* The opinion does not propose to distinguish between *physical effect scope* and market effect from the *entire* road, and the court says: "The 'diminution' must be that caused by *constructing* the road," "*or a physical injury to the property.*" Sec. 9 here in question was not referred to.

1873. *Page* v. *R. R.*, 70 Ill. 324:

It was claimed by the appellant (property owner) that the jury could consider the damage to a *part only* of the remainder—the 50 feet nearest the road. The court properly and accurately said "that it was the effect not only on any *selected part* of the tract, but upon the *whole* tract" that was to be considered.

Again, the court said:

> "As we understand the case before us the market value of the lands *as enhanced by the general resulting benefits* from the road, *was taken*, and under testimony introduced *that ex-*

hanced market value of a *narrow strip* of land *adjacent* to the road would be diminished by the construction and operation of the road; taking the above together, in view of the peculiar *local* advantage of the *crossing* such market value of the whole tract would not be diminished by the construction *across it*, and operation of the railroad."

The opinion on the benefit phase is contradictory and confusing and its *main result was clearly to credit the property its local benefit.* (It is for *this reason* that the case is later frequently cited along with the later *Henry* and other like cases, *infra*, and as consistent therewith.) It then seeks to charge the property with a "crossing" benefit, a sort of "depot" or *special travel facilities* benefit, but this *limited to the easement scope of the tract involved!* Thus again confusing the subject. It was evidently considered a "physical" benefit to have *special access* to the road from one's own land.

But this "special depot" allowance or idea was not followed in later cases; and is crowded out of view by the sweeping language repeated so often in quotations made herein. (This "depot" benefit is a fallacy. Lewis, §703, p. 1718.)

The case is mainly valuable and is usually cited as authority for *taking the remainder as a whole* in reckoning damages.

1873. *Eberhardt* v. *R. R.*, 70 Ill. 347:

A two-page opinion, with practically no discussion, following the Page and Francis cases. We can get nothing out of this case, except that it evidently assumed *"enhanced value," i. e., the local* and neighborhood benefit was allowed to the property.

It is therefore to be presumed that whatever does not appear otherwise in the report of the case was *in accordance* with the plain statute and not against it.

We now submit the following notes:

Note 1. Bearing in mind the elemental rule that the real purport of a decision is to be tested by the *facts* and *conclusions thereof*, we aver:

That *not one case* will be found in the long list below that attempts to violate the plain letter of the statute in question, with the sole and only partial exception of the first case—*Page* v. *R. R.*, just analyzed.

Note 2. That, there being a number of early cases where the statute was most specifically defined (if such be possible in view of its plain self-defining terms), wherever in the later reviewing cases *language* or *terms* have been used here and there capable of being used in *two* senses, it will of course be presumed that the same were used in the sense which is *in accordance* with the plain statute, and within the delimitations of the chief rulings.

Note 3. In the *railroad* cases (like this case) listed below (with the exception of the first or *Page*) there is *scarcely a sentence* in reference to benefits or damages that is capable of two meanings, or that needs to be explained by even a reference to the facts involved. While in the *municipal* or local improvement cases the *entire improvement*, (or the part considered), was *local to the premises or to the particular block in or over which the property affected had rights and easements*; and hence expressions in several of these to the effect

that "the whole and not the partial effect" should be considered, that "the improvement should be considered as a whole," etc., are explained at the same time by the court *expressly limiting* its inquiry to *"physical effect," "special benefits not common to other property,"* and by the court *expressly excluding* "neighborhood" or "district" effect, etc., which naturally must be excluded because *incapable of inclusion, i. e.,* of approximate estimation.

(If there were the slightest doubt as to this latter issue, as affecting the "municipal" cases, it would be removed by *Chicago* v. *Mecartney,* 216 Ill. 377, where it was held that in such a "taking" or "damaging" inquiry "neighborhood benefits" *were of necessity excluded* and reserved *for future special assessment* in supplementary proceedings to collect for the cost of the work.)

In other words, a thorough consideration of this entire line of cases will reveal as uniform and consistent a doctrine or construction as it is easy to imagine or to find in the realm of reported decisions —a situation which was inevitable from the fact that there was an existing statute **"too plain to bear** *construction." While the first attempt (the Stickney case) to violate the statute has just as inevitably resulted in a pure* **contraction;** *and all the later cases either simply repeat such contradiction* **or expressly reaffirm** *the plain terms of the statute.*

Note 4. In examining these cases the court must bear in mind that in Illinois the "two item" method of estimating compensation where part of a lot is taken, (criticised above Point I), is—at least generally—in vogue, viz.: One allowance for the *value* of the "part taken" and one for "damages to the

remainder," treating the remainder as "property not taken but damaged." Abutting property damaged—*i. e.*, where no part of the lot proper is taken—is also placed in the class of "property not taken but damaged," and the inquiry in such cases is governed by the same rules as that in respect to "damages to the remainder."

Note 5. In the following list of cases—where for convenience we number each and give the year of decision—those in italics are *railroad* cases, as the one at bar; those in Roman are cases where a *local municipal* improvement was involved, *i. e.*, of a class where a local or "special" assessment could have been, and sometmise was later levied for the cost of the improvement.

Note 6. We refer particularly to Nos. 2 (Henry), 4 (Rigney), 5 (Kirby), of the earlier cases, and No. 15 (Aldrich) of the later, as construing, defining and even *illustrating* the statute, beyond any chance for doubt; and none of the intervening cases will be found in conflict.

1 1872 *Page* v. *R. R.* 70 Ills. 324

(See special analysis of this and two other cases referred to in the 70th Ill., supra).

2 1875 *Keithsburg etc. R. R.* v. *Henry* 79 Ills. 290

This case was the first full and deliberate construction of the statute.

The leading contemporaneous and dominating Illinois case upon the question.

It was a proceeding under the 1872 Act in question to condemn for a right of way over a farm.

After referring to the allowance for the "part taken" which under the local practice was allowed for separately or as a separate item, the court then takes up the question of damage to the property "not taken," *i. e.*, to the "remainder." The court then refers to various elements of damage which must be "direct, proximate and physical"; and then says:

> "This being so, can the company show that notwithstanding the damage thus done, the owner has received benefits, or advantages, that should be deducted? *The statute expressly provides that they shall not be deducted from, or set off against, such compensation, in any case.* Then, the whole question turns upon what is referred to by the word 'such.' * * * The word 'such' refers to compensation for *both* the taking *and damaging* of private property. The compensation, then, must be made to appellee, both for the property taken and damaged by the construction of this road, *and the statute*, as we have seen, *has prohibited any set-off or deduction from the damage his property not taken will sustain by reason of the construction of this road.* **The language of the statute is so plain that it will not bear construction.**
>
> * * * * *
>
> "*This* statute has prescribed the mode of ascertaining what compensation shall be made, *and it alone must control, and former statutes are repealed, and like decisions, so far as they conflict with the present statute, must yield to its requirements.* (p. 293, and see p. 294.)
>
> * * * * *

3 1877 Hyde Park *vs.* Dunham 85 Ills. 569

Held that "*special benefits* to the property not taken" should be considered, viz.; *direct access* given the "remainder" by widening the abutting street. But general *neighborhood* effect caused

by the street opening was expressly excluded (p. 570.)

1882 Rigney *vs.* City of Chicago 102 Ills. 64

4. Where a learned review of the historic struggle over the term "property" is given; and where it is held that the *scope of inquiry* in these abutters' cases is whether or not there has been a *"direct physical obstruction or injury to the right of user or enjoyment"*—a "physical" scope (78). (One of the leading eminent domain cases in the country.)

5 1882 *St. L., etc., R. R.* v. *Kirby* 104 Ills. 345

Where the ruling in the Henry and Rigney cases was further emphasized in the most specific manner possible, and where the jury were told to consider the railroad *"as running through this farm * * * and no further,"—which of necessity excludes all market facilities*, and where the jury were told that they *"should not consider"* the same. (p. 348.)

(*Here the court not only clearly decided but* **objectively illustrated** *its decision.*)

6 1883 *McReynolds* v. *R. R.* 106 Ills. 152

Where the land owner claimed that Sec. 9 forbade the allowance of even *"special* benefits" and the railroad counsel *defended* their allowance; both sides quoting the Henry case. The court, of course allowed them. (p. 158.)

7 1885 *Dupuis* v. *R. R.* 115 Ills. 97

A petition to condemn city lots for right of way and depot purposes where it was held that the

measure of damages the difference between value of the "remainder" "before and after the *construction* of the road." No issue was made as to market facilities, and no indication of any departure from the statute or from prior rulings.

8 1886 *Chic., etc., R. R.* v. *Blake* 116 Ills. 163

Syl. 4, p. 169: "*No* benefits * * * to the lands or property * * * *in common with all other property along the line of the proposed railroad can be set off or deducted.*" The court also held that the original Page case, *supra*, is in substantial accordance with this ruling.

9 1886 Hyde Park *vs. Washington* Ice Co. 117 Ills. 233

Syl. 2, Opinion p. 236: Damages are to be determined "with reference to the *special benefits only* to the property not taken." "Common" and "neighborhood" benefit "is *not* to be taken into consideration." *Page* case cited and construed as in accordance with this rule.

10 1887 *Concordia Cemetery Assn.*, v. *R. R.* 121 Ills. 199

Syl. 3, 5: Local market benefit allowed the land owner by allowing him the value "*as enhanced by prospective benefits to result from the construction of the road,*" and then considering damages to this *enhanced value.* (p. 205 Opinon.)

11 1887 *Chic., etc., R. R.* v. *Bowman* 122 Ills. 595

(Same as Kirby, *supra*,—the question was held to involve the effect of "the railroad *constructed through the farm.*" And all but "actual and *appreciable* injuries" excluded. Syl. 6, Opinion p. 601.)

12 1888 *Kiernan* v. *R. R.* 123 Ills. 188

The test of damages is the "decrease in market value by reason of the construction and operation of the *railroad.*" (p. 194.) No issue made on the subject of "market facilities"; and no attempt to reverse or modify prior rulings.

13 1888 Harwood *vs.* Bloomington 124 Ills. 48

Which held that Sec. 9 in 1872 Act applied to a taking for municipal improvements. "Special benefits" only allowed and defined to be "*benefits not common to other property.*" (p. 50.)

14 1888 *Wabash, etc., R. R.* v. *McDougall* 126 Ills. 111

Railroad first constructed upon an embankment or "fill" across the farm. Plan of construction three years later changed to *trestle.* Damages assessed for the first taking on embankment plan and a *reassessment* made for the later change to trestle, causing new damage. *Physical effect scope* clearly held.

15 1890 *Chicago, etc., R. R.* v. *Aldrich,* 134 Ill. 9

Reaffirmed Kirby case, *supra,* as to portion of R. R. *limited to farm.* See full reasoning, p. 16, *et seq.*

If there were any item of doubt hanging over or about the theretofore specific and clearly defined attitude of the Illinois Supreme Court as to the exclusion or inclusion, of "market facilities," etc., all vestige of it would have been removed by this opinion.

16 1891 Springer *vs.* Chicago 135 Ill. 552

The "whole improvement" was a strictly local improvement, or one opening up *a cul de sac* directly east of the property and giving a new *direct* egress from the property by means of bridge, viaduct and approach. Held to be "*one* improvement"; and that in determining physical effect, that is, an access-giving effect, the approach to viaduct and bridge should not be separated from the latter. A *direct or physical effect scope* involved.

17 1893 Washington Ice Co. *vs.* Chicago 147 Ill. 327

Special benefits *again* defined as "benefits *not common to other property;*" and held that neighborhood effect from opening by the street so as to give *a neighborhood market effect* "for factories" etc., must be excluded on the authority of the "physical effects" case of McDougall, just cited.

The Supreme Court of Illinois first departed from the plain text of these cases in the case of *Metropolitan R. R. Co.* v. *Stickney,* 150 Ill. 362, decided in June, 1894, where as shown *infra* it attempted to reverse—and in the same breath affirmed—the rule announced.

VIII.

The Stickney case ruling.

(150 Ill. 362.)

In this case the court for the first time, ruling under the constitution of 1870, tried to hold that *any* market benefit accruing from the whole improvement was "a special" benefit.

(1) That the logic and reasoning of the Stickney opinion is *fallacious* and *contradictory* to the last degree.

(2) That it ignores the now *common* and long established classification of *market* benefits and damages, etc.

There are in fact *three* classes of *effects*—*i. e.*, considering both *market and personal* effects—which flow from the establishment of a public work, viz.:

(1st) *"Direct, proximate and physical" market* effect involved in the question of taking or damaging *vel non.*

(2nd) A *market* effect arising *not* from any physical invasion of the *use* of the lot proper or of its easements, but arising from the *improvement as a whole.* And

(3rd) A *general effect*—usually beneficial—accruing to the *entire* public or community at large, the *people generally,* by reason of the *aid to prosperity or business in general, i. e.,* an effect arising from the *establishment* of such work or convenience for the public use, etc., and interwoven with general business and social conditions. (It is *through* this that the 2d class comes.)

(3) That Mr. Justice Shope made a *two*-class division of *all* benefits (*market* or *otherwise*) and thus plainly confused and re-confused the *first with the second and the third with the second.*

(No petition for rehearing is reported as having been filed in this Stickney case.)

(4) That Sec. 9 of the Eminent Domain Act—the *very section involved, was apparently not mentioned in the briefs of the parties in the Stickney case, and* though *mentioned* (very incidentally) in the opinion, was *not, however, construed in the opin-*

ion. Somehow or other the parties, and the court, apparently, did not realize that Section 9 was the very thing involved.

(5) He then caps the climax by his distinct holding in syllabus 5 (page 371), **expressly excluding all effect from market facilities,** a thing gravely *repeated* in the very *last* case cited in the majority opinion in the Brand case. Such opinion refers to and quotes from the Everett case, 225 Ill. 529, where the court *expressly* said (and we repeal, the said majority opinion *quotes and approves* the same!) that "*benefits such as* **increased facilities for travel**" * * * *are* **not** *to be taken into account.*"

The court thus contradicts bodily the prior conclusion in the opinion that any market benefit is a "special" one.

For such travel benefits so excluded are the only benefits outside of physical benefit which could have arisen from the work and benefited the property in question. Could the court have mentioned any other?

The holding in the Stickney case to the effect that the Henry Case (79 Ill. 290) *was the only one in conflict with its conclusion, lately repeated by adoption in the majority opinion here, is startlingly inaccurate and is poignant with injustce to the court tself.*

In all candor and with all due respect to the court, the **exact contrary is strictly true,** *viz., that there is* **not one case** *prior to the Stickney ruling arising under the* 1872 *act which supports such conclusion;* and that the holding in the dissenting opinion of Mr. Justice Cartwright, in substance to this effect is accurate.

With a false concept in mind mentioned elsewhere and thus confusing two distinct *classes of blended* market effects, etc., all decisions reviewed by Mr. Justice Shope, in the Stickney case, are made to bend to this false concept.

The result is, as shown by the detailed analysis, *supra:*

That the opinion—and its syllabi which accurately follow it—fairly reek with fallacies upon their face, and at almost every turn; and case after case *squarely supporting* the Henry case both in *language and conclusion* is distinguished or waived aside upon the ground that the court did not "*mean*" *what it said or concluded—when what is said* and *concluded was* clearly right *and clearly in accordance with a* plain statute, *and, as the Illinois court does not deny,* clearly just!

That the learned justice did not realize that in the several cases where the court used the expression "the difference in value of the property *before and after* the construction of the *railroad*," or "*without the railroad and with it*," it professedly and properly was dealing with the physical structure at the particular spot or locality, and within the limits of its "direct, proximate and physical" effect—and not with the "improvement" in its entirety, or the enterprise itself; and the term "the railroad" meant only the portion thereof which physically affected the premises in question.

This leaves the Stickney case devoid of support from a single prior case squarely posited on its facts and conclusions; and in view of

the facts involved, it even leaves practically no supporting language?

In order to properly analyze the reasoning of this case we need only take the various planks of the syllabus for analysis; for the language of these are taken almost bodily from the opinion.

Syl. Nos. 1 and 2 (p. 370 of opinion):

In this the court simply lays down the rule for *local assessment* cases—in Illinois frequently called *"special"* assessment—and an incorrect rule at that. For a lot is *not* to be assessed for *(all) the* "special benefits—but only for its *due proportion of cost* of the work.

No. 2:

The instruction which is quoted herein, we submit, is correct.

3. *"If a piece of property is enhanced in value, its enhancement—or, in other words, benefits to the property—cannot be said to be common to any other* PIECE *of property* SPECIALLY *enhanced in value, and it is thus* SPECIALLY *benefited* WITHIN ITSELF, *and* IRRESPECTIVE *of the benefit that may be conferred by the* IMPROVEMENT *upon other properties."* (P. 370.)

It is hard to get anything of value out of this.

It is just as easy to say that *each citizen* benefited in his business by the establishment of a public facility is benefit *within himself."* But how to *estimate* that benefit or *whether* it can be estimated in dollars and cents is a different proposition.

No. 4 (p. 370-1):

Here the court tries to make *two* classes of benefits out of *three classes.*

5. *"So a railroad built through a town or through the country may be a* GENERAL *benefit by* AFFORDING ADDITIONAL FACILITIES *for travel and commerce, and thereby be of benefit to the community at large;* BUT THE EFFECT *of such general benefits* UPON ANY PARTICULAR PIECE OF PROPERTY WOULD BE IMPOSSIBLE OF ASCERTAINMENT AND SPECULATIVE, *and it has always been held that such benefits* ARE NOT TO BE CONSIDERED FOR THAT REASON." (P. 371 of Opinion.)

This flatly contradicts the prior conclusion and furnishes one of the cardinal proofs of its error!

It is practically all that plaintiffs here have claimed!

For, what benefit or beneficial effect can come to this property here *or* to the entire surrounding neighborhood *except "travel"* or *"commerce" facilities?*

And if the full market effect therefrom is *"impossible of ascertainment* and speculative," how are you going to tell how much to offset to the item of *"physical damage"* which, as every one must concede, *is* capable *of* measurement, *i. e.*, of estimate or computation?

Nos. 6 to 12 embody the fallacy of assuming damages as a direct effect and then jumping beyond "physical scope" to inquire for offsetting *benefits*—which the opinion has just said can *not* be estimated.

Nos. 13, 14 and 15 are all fair statements of the law when held down to a *"physical effect"* rule or scope.

IX.

Cases Subsequent to the Stickney Case.

Said ruling, being squarely contradictory on its face, has not been followed in later decisions.

Later cases therefore either simply follow its contradictions or expressly reaffirm the prior law and the plainly worded statute.

Outside of one or two cases submitted along with the Stickney case and disposed of later in formal *per curiam* opinions there are only a very few which attempt to follow it; and in such attempts as said they of necessity *follow a hopeless contradiction*. So that, wherever the Stickney case is referred to, expressions will also be found in the same opinion that *only "physical effect"* is to be considered. And right along with the Stickney case are cited prior rulings which *involved only physical effects* and *limited* benefits to the same scope. So that such cases can be either classified as *self-contradictory* or "confusing" or as cases *reaffirming* the statute and the Henry case construction of it.

We do not analyze these cases at great length, since they are not vital here. But we note the following:

(1) That the Illinois "local improvement act" of 1897 (passed while the "loop" road was in process of construction), affecting municipal improvements (which the court had held in *Harwood* v. *Bloomington*, 124 Ill. 48 (50), *supra*, were governed by Sec. 9, in prescribing the "taking" or "damaging") *expressly excludes* local benefit or effect in fixing "com-

pensation"; for it *reserves such for special assessment.* This is a strong *statutory construction* of a *plain* statute. (Sec. 521 of Chap. 24, "Cities, Villages and Towns," Rev. Stat. Ill. 1912, p. 408.)

It is there enacted:

"The Commissioners * * * having found the said amounts" (*i. e., a*, the amount of the cost of the work, including the items allowed for *property damaged*, and *b*, the amount to be specially, that is locally, assessed) "shall further report what lots, blocks, tracts and parcels of land will be *specially benefited* by the said improvement * * * and shall apportion and assess the amounts so found to be of benefit to the property" (*i. e.*, the aggregate assessment in the *district* found specially benefited) "upon the several lots, blocks, tracts and parcels of land in the proportion in which they will be *severally benefited* by said improvement," etc.

(2) We also in addition here point out:

(a) How the state court ruled that for general neighborhood, *i. e.*, "*local*" damage, a property owner could not recover. That such damage was "*not special*" to the property. (As, for instance, that caused by a railroad running through a residence district which, or the plan of construction of which, did not touch the *physical* scope of lot—and—easement. Though nearby property might suffer most from a neighborhood nuisance, held, "such damage was only a *difference in degree*" (from that suffered by others), "and not *in kind.*"

Aldrich v. *Met. Railway Co.* (the latter one of these very defendants in error here), 196 Ill. 456 (syl. 1).

I. C. R. R. v. *Trustees of Schools*, 212 Ill. 406.

(b) And that by two *express* rulings they held that the "*diversion of traffic*" from the neighborhood was no element of damage in abutters' cases.

Chicago v. *Spoor*, 190 Ill. 340.

Chicago v. *Jackson*, 196 Ill. 496.

And hence *increase* of such traffic *could* not be an element of *benefit*.

(c) That in *Chicago* v. *Mecartney*, 216 Ill. 377 (cause of action arising in 1893), as properly analyzed, the state court had held that in determining the questions of a damaging *vel non*, assessment benefits, *i. e.*, net *neighborhood* effect *could not* be offset to *physical damage* or effect, such were reserved for future or supplemental assessment.

This statute here construed was the same one involved in *Harwood* v. *Bloomington*, 124 Ill., *supra*, p. 65.

(3) Note also the following:

R. R. v. *Borms*, 219 Ill. 179:

"The court instructed the jury that in estimating the damages to appellee's land not taken they were *not* to consider such general benefits, if any, *which might be derived from the* construction and operation of the road,—meaning by general benefits, *those which the land would share in common with others in the same vicinity by making a better market or by affording conveniences for trade and travel.* This ruling of the court is assigned as error." *Held, no error.* (181) Citing Stickney Case. (Re-affirming.)

R. R. v. *Vance*, 225 Ill. 270:

This case (referred to in majority opinion) holds that benefits which are "*conjectural and specula-*

tive" should be excluded. The court here cites (p. 273) the *physical effects* cases right along *with* the Stickney case ruling, and fails to note that they are radically different in substance and scope. (Confusing.)

R. R. v. *Everett*, 225 Ill. 529:

A *coal lands* case, where the switch or other connections to market the coal were not only a local, but held to be a special benefit. (Such cases some courts place in a class by themselves, as Mr. Justice Cartwright says in the Brand case dissent. But in this case the court says that *"benefits affecting the whole community, whether owners of property along the line of railroad or not,* SUCH AS **increased facilities for travel,** etc., **are not** *to be taken into account."*

All of these cases except the Vance case expressly re-affirm the ante-Stickney case rulings and the statute.

X.

The Majority and Dissenting Opinions of the Illinois Supreme Court in the Brand Case. (258 Ill. 133.)

THE MAJORITY OPINION.

The chief and dominant features of this opinion, (which shows most fully the latest attitude of that court in respect to this issue.)
as we view it, are these:

First. There is no attempt therein to defend the *Stickney Case* ruling upon its *merits,* or to prove that the same embodied *"just* compensation."

Second. The conclusion is based squarely upon the rule of *stare decisis.*

In justification of the said conclusion, the court points,

(1) To three *initial* cases, *Francis Page and Eberhart* (70 Ill. 324, 238, 347), decided in 1873, referred to and analyzed, *supra.*

(2) To the *Stickney* case; and

(3) To the last two cases (*Vance* and *Everett,* 225 Ill. 270 and 579.

It then avers,

(4) That with *"but one exception"* (the Henry case, 79 Ill. 290, *supra*), the announced rule has been *"adhered to for forty years."*

(It will be noted that the dissenting opinion takes the position that the *exact opposite* has been the rule for the forty years).

It does *not* seem to accept the *challenge to construction* thrown out by the *plain language* of Section 9, or to deny that such language *inexorably* calls for a reversal of the lower court's judgment.

THE DISSENTING OPINION IN THE BRAND CASE.

After referring to the obvious injustice or unfairness of the rule just referred to, Mr. Justice Cartwright furnishes a long line of Illinois "physical effects" cases *in addition to those* cited above, which clearly define the *scope of the inquiry in all cases brought for damages occurring from a public use.*

That scope is defined as, and limited to **"direct proximate and physical"** effects upon the *use* of the land *itself* through which its market value is directly and instantly affected.

The rule being based upon a plain statute, and in addition settled by a uniform and totally unconfused line of cases for 22 years or more (prior to the Stickney case of 1894), Mr. Justice Cartwright interprets the later cases which re-cite and re-adopt them as following them, which they do in the main. And he finds the whole 40 year or more line of cases uniform by adopting what is sound in the Stickney case opinion and ignoring the confusing and unsound expressions in it and in a few later cases.

He assumes that the language of "before" and "after" and "without" and "with" "implies a consideration of (only) *legitimate elements* of damages and benefits."

We submit that a reviewing opinion which rejects or ignores the confusing and unsound *language* in a few cases as not meant and finding the whole line uniform in substance, is a far more accurate and acceptable review than one which assumes to upset the whole 40-year line *alone* by one squarely *contradictory*—and hence meaningless—opinion and the *language* of a few others.

Conclusion.

Let this unjust, wasteful, and mischief-breeding element or onus be banished from American jurisprudence.

For a property owner, specially damaged, to be compelled as a condition precedent to a recovery, to spend more than the average fortune in an *attempt* to produce or account for in specific figures a thing "impossible of ascertainment," is flagrantly unjust. He would ever confront the certainty of either (1) a jury disagreement; (2) a judgment against him upon an instruction to the jury that if they cannot measure or estimate the impossible thing they are "to find the defendant not guilty;" or (3) a verdict forced from twelve men *in spite of* the instructions of the court, and produced largely on *instinct*. Such a proceeding is obviously farcical or oppressive—nay, we should say *offensive* to every conception of court economy or justice. And if all the rights of citizens were to be enforced in proceedings of similar merit, it would make our entire system of jurisprudence a farce.

Such a proceeding has no place in American jurisprudence. And judging by the law of average results, it would be far better to shut the door of the court in a suitor's face than to invite him in upon condition that he should succeed in doing the impossible,—or else be driven from the forum without relief.

Respectfully submitted,

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Office Supreme Court, U. S.
FILED
MAR 14 1918
JAMES D. MAHER,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1917.

No. 190.

SERRETTA J. McCOY, et al., Executors etc.,
Plaintiffs in Error.

vs.

THE UNION ELEVATED RAILROAD COMPANY, et al.,
Defendants in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

REPLY OF PLAINTIFFS IN ERROR.

JOHN S. MILLER,
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BARNARD & MILLER, PRINT, CHICAGO.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

REPLY OF PLAINTIFFS IN ERROR.

What is covered by the brief of counsel for defendants in error, what the brief fails to cover, how far it extends towards the actual scope of the case at bar, and how far it falls short thereof, are all probably best appreciated by recognizing and keeping ever in mind the exact scope of the case.

With this concept ever in mind, the points of counsel seem to show up as sub-points, which neither singly nor taken together present, even on their face, a conclusive answer. In other words, accepting a term fast becoming standardized, they impress us as "*near*-points."

The case at bar is not a case where the trial court

simply erred in the admission of evidence, as in *Jones* v. *Buffalo Creek Coal Co.*, U. S. Adv. Op. 1917, p. 91, or in the *Laidley* case, 159 U. S. 103, which it follows.

This is not a case where the dominating question involved is whether "property" is "taken" when easements only are primarily affected, *and* where that issue is an open question.

The question here is not what the former Constitution of Illinois provided in respect to property rights, nor whether the Illinois court was right or wrong in ruling over 50 years ago that under the clause "property *taken*" of that document property was not "taken" when easements only were affected. (Although it has now long been generally recognized by the courts and the bar at large—as is shown in the masterly Rigney case opinion, 64 Ill. 102—that such a ruling *was* wrong.)

The issue here is not a mere "definition of special or general benefits" or of any particular term used in real estate law; and on the other hand if it involves a clearly established *property right*, the latter cannot be *defeated* under the *guise* of a definition.

Nor can such property right be disposed of by an instruction like No. 14 (Rec., 290)—which counsel quotes p. 4—in which the court *declines* to define special benefits and declines to limit them to direct physical effect. And when this instruction is coupled with others telling the jury in effect that *any* "enhancement in value" is a special benefit (No. 16, Rec., 291); that damage to property "does not mean *physical injury*," No. 17, (directly against

the whole line of Illinois cases scheduled in our Point VII, pp. 90 to 99), the mischief is hopelessly done. All this in a case where a veritable mass of evidence of indirect and non-physical effect was admitted, and the court refused an instruction *not* to consider them.

But this is a case where, *first*, an *express statute* of the state has clearly and in sweeping and unequivocal terms *established*, *defined* and *guaranteed* a *distinct property right;* where, *secondly*, the courts of the state have *uniformly construed* the statute in accordance with its plain terms for a period of over 20 years confining it to *physical* scope, and *physical* effect; where, *thirdly*, *on the faith* of which plain statute *and* uniform construction the abutter has purchased and held his premises; *after* which, *fourthly*, the state court *absolutely and formally denies and destroys* that right. That is, (1) by ruling it out of the case, (2) by admitting evidence—i. e., "guesses"—which, if believed or accepted, destroys it, and (3) by giving instructions which deny the right *and* also which would make it *impossible* for the trial jury *to enforce* the right if they recognised it.

This statutory right being therefore *clear*, and its infringement being likewise *clear*, it is immaterial that such right could *also* rest upon a constitutional clause—"just compensation"—as construed, defined and made clear by state court decisions rendered long prior to the purchase. This constitutional clause, therefore, is only referred to here in the way of emphasis, or as pointing to an *additional* and *independent* support of the property right *if* the more immediate one under the statute were taken away or ignored.

That is to say, the abutter having a right to recover under the *"or damaged"* clause of the present Illinois Constitution of 1870, the "due process" clause of both constitutions, State and Federal, is infringed (1) if the court *denies him a trial* as to such "damages," or (2) *so conditions* the trial of his claim as to make it *impossible to recover*—in other words, requires him to prove or the jury to find *the impossible*—which latter, if just as good, is no better than no trial at all.

The same thing follows as to such constitutional right to "just compensation" for property "damaged" as *further specifically* guaranteed and assured by the 1872 statute, *and* its settled construction.

Had, therefore, this statute of 1872 prescribed the exclusion of an element that was measureable or estimatable—*i. e.*, one limited to a "dollars and cents" rule, or one existing in mere *mathematical* calculation—it would have infringed the abutter's rights for the court to deny him the benefit of such element.

When, however, the statute expressly excludes an element which cannot *practicably* be included without rendering the trial *abortive*, the court by *attempting* to include it in effect *denies a trial* to the abutter, or, the same thing,—tenders him a humanly *impossible* or *speculative trial*. So that here there is a double denial of the "due process" clause, or at least the error of the court is double featured or is double based as error.

Keeping this dual concept of plaintiffs in error's cause ever in mind, the counsel's claims upon their face are easily seen to fall short, and it is even hard

to drag them up to the margin of the concrete case, taken either singly or "bunched."

Hence, it would seem that we could best serve this cause and court—particularly in view of our brief-in-chief, in which an attempt was made at an exhaustive outline—by scheduling here short answers to the points *seriatim*, and in the order as made.

The greater part of the brief will, however, be anticipated by the following:

"Station Benefits."

1st. The quotations from the State court opinion (p. 2) seem merely to emphasize the fact that the witnesses on both sides agreed that the upright columns, the darkening of the windows from the structures, and the noise, "when considered by themselves, would be detrimental to the premises," *i. e.*, that is, a distinct *physical* injury was *proven or practically conceded*—independently of the fact that the *physical situation alone* proves it, *i. e.*, makes a denial thereof ridiculous.

2d. The fact that plaintiffs' one expert gave it as his *opinion* that there "had been a continuous increase in the value of the premises *since* the *completion* of the Loop," and in his *opinion* "a portion of that increase which he said it *was impossible to estimate* was due to the increased travel brought to the premises by the elevated railroad, but that he did not take that into consideration in fixing the damages," etc., is of little significance.

Plaintiffs are not bound by this item of evidence to the exclusion of all other evidence, including the

figures later given showing *no* increase of downtown travel from 1896 to 1898. And such item is no admission either on the part of the witness or the plaintiffs that the *immediate* market effect on the premises from travel benefits at the *instant* of such "completion" of the structure was *anything at all*—much less that it fully offset the heavy and clearly proven *physical* damage, a seemingly absurd idea.

3d. The State court referred, it is true, to the number of passengers who paid fares during various loop years at the two stations nearest the McCoy premises. But the witnesses of plaintiffs did not confine themselves to these *two* stations in estimating effect. Defendants put in evidence the paid fares of *all* the eleven stations in the loop (P. R., 131 to 136). And our references to their evidence and "estimates" (Brief pp. 24 to 32), show no attempt to confine either evidence or estimates to the one particular station or to two of them. And the court *declined an instruction* for the jury to *consider special "station" benefits*, after it had declined to rule out *all* such travel benefits. (Our brief, p. 38, Refused Instruction No. 8, which follows the New York holding in the Newman case, 118 N. Y. 618, 628.) (This issue more fully treated below.)

4th. Instruction No. 14 (p. 4) is well enough as an abstract proposition so far as it goes; but what the court calls "special benefits" in that instruction was made clear by *other* instructions, where it ruled that *anything* that tended to *increase the value* of the property—whether directly *or* indirectly, or whether estimatable or speculative—*was* a special benefit, and also by its declination to limit the inquiry to

direct physical injury, etc. (Our brief, pp. 40-42, and Par. "Third," p. 44.)

5th. One marked feature of counsel's brief is this:

He does not, as obviously he cannot, question the fact of the uniform construction of the 1872 statute by the Illinois court, as shown in our Point VII, and covering a period down to the Stickney case ruling in 1894—with this exception: That he seems to use in various places in his brief two cases in the 70th Illinois which we briefly analyzed at the outset (pp. 90-91), viz: *R. R.* v. *Francis*, 70 Ill. 239, and *Page* v. *R. R.*, 70 Ill. 324. And he quotes some *language*—particularly from the former—in apparent contradiction of such uniform construction.

But in the Francis case the cause of action arose *before* the Act of 1872 went into effect. For when this cause was referred to in the Page case, in the same volume, the court said that "the question there" (in the Francis case) "was under the Constitution, and not under the act" (1872 act) "*forbidding benefits to be deducted.*" (P. 328.)

What was said by the court in the way of "hurt, injury or loss," (in the Francis case), was said in view of an application for sustaining *a bill in equity*, which, as established by other cases in Illinois, would not lie in any event; and such language was used to bear upon the *non-emergency* for an injunction.

So, too, the court confused neighborhood damages with "a *physical* injury to the property." (P. 240.)

This Francis case might colorably,—though not very effectively—be used to claim that the construction of the constitutional clause of "just compensa-

tion" before the 1872 Act went into effect, was not absolutely uniform.

But besides being contradictory in its language, it was overruled by the later cases cited under our Point VI (pp. 88-89), and also by the Rigney case opinion, 102 Ill. 64.

As to the Page case, it seemingly did arise under the Act of 1872, and was the first case arising thereunder.

There is some contradictory language in the case so far as benefits are concerned. But in its main holding, or its net result, the court went beyond the statute *in favor of* the property owner. Not only was "compensation" given at the *"enhanced value by reason of the railroad"* for the land actually taken, 2.34 acres (p. 327), but in testing the "damage to the remainder" the same thing was done. For the court held that the entire effect on the remainder should be considered, and not "that enhanced value of a narrow strip adjacent to the railroad merely," and that the entire remainder should be taken as a whole. "Taking the tract together, in view of the peculiar local advantage of the crossing, such market value" (*i. e., enhanced* value) "of the whole tract would not be diminished by the construction across it and operation of the railroad," etc. (p. 330).

Now, the "peculiar local advantage of the crossing" arose by reason of the fact that "under the law of the state all trains on both railroads have to stop at a crossing" (p. 327). This was not even a permanent *depot* advantage, since this law of the state was merely regulatory and was apt to be

changed at any time. Besides, any depot or "station" advantage is indirect,—is simply after all travel benefit. For it is only through depots and stations that such travel benefit comes.

It is therefore seen that in this case the local neighborhood and advanced value was taken *and allowed to the property owner*, and *then* the peculiar local advantage of having trains stop right on the premises, *i. e.*, within the physical scope of lot and easement, instead of perhaps merely outside of them, was erroneously allowed as a benefit.

(As a matter of fact, the true rule was to take the value of the entire tract before the advent of the road, leaving out of view any enhanced value by reason of the location of the railroad, and then consider what the "remainder" would be worth with the railroad constructed across the part taken, also excluding all such enhanced value, which is the same as "neighborhood benefits"; that is, excluding all but special benefits.

Lewis, 3d Ed., pp. 1198, 1199.

Louisville R. R. v. *Ingram*, (Ky.) 14 S. W. 534.

Lambeth v. *Power Co.*, 152 N. C. 371).

It is true that the New York courts attempted this distinction of a peculiar "station benefit" which prompted the following sarcasm from Mr. Demarest (p. 181):

> "Only a shadow of doubt attends the mental satisfaction experienced on completing this interpretation of the judicial exegesis, produced by a statement in the final sentence of the quotation—that the benefit must 'be *directly* derived from the railroad.' In truth, it is just here that

the companies encountered the most serious practical difficulty, in the adduction of evidence, it being generally impossible to prove that persons descending from the stations availed themselves, in any great numbers, of immediate and direct access to abutting premises, except in the instances of a rare business transacted at corners where a railroad avenue is intersected by a transverse street."

The difference, then, between this Page ruling and the later 20 years' line uniform of decisions construing the statute is that the former strains the statute if anything more *in favor* of the land owner than the latter, and hence can hardly be set up in opposition to the latter.

A Shedule of Answers to Points of the Brief.

Point I.

The proposition contained in the first paragraph can be conceded.

As to the second, take out the word "alone" and it is sound. As stated, it is wrong; for an *additional* ground for exclusion is the owner's and citizen's or taxpayer's *legal right* or natural "equity" in the improvement, and particularly as guaranteed by the Constitution and Statute of Illinois. (Our brief, Point II, p. 77.)

The third proposition is conceded, marking particularly the words "*specially and directly* increased in value"—*i. e.*, a question of *direct, proximate* and *physical* effect.

Point II.

"The Constitution of Illinois contains no express prohibition against the consideration of benefits, and none is implied."

As that Constitution calls for payment of "*just* compensation," and as this term means "a full and exact equivalent * * * to the owner" (Monongahela case, 148 U. S. 312, 326), "for property taken *or damaged*," an exclusion of general or public benefits *is* implied.

And when the courts of a state have expressly held such a clause in their own State Constitution to imply as much, then the owner has a *property right* to his special damages with this general element excluded.

Were it not for the 1872 statute plaintiffs' case, therefore, would be sufficient. (Our brief, Point VI, p. 88.)

As to the second and many-featured sentence placed under this point II it is sufficient to say:

That while the matters scheduled may be "primarily"—*not "purely"*—a state question, a decision thereon is "subject to review" where (1) a property right has been created by a plainly worded statute, (2) a uniform construction thereof has been given for years by the State courts, and (3) they then attempt to deny such right, after one has purchased on the faith thereof.

When such a property right is formally and deliberately denied by the State Supreme Court, the judgment falls within the pale of (legally, at least) *arbitrary* judgments.

Said Mr. Justice Peckham in declining review of a State Court judgment in the Chicago Theological Seminary case, 187 U. S. 662 (677):

> "We are not prepared to hold that the state court so clearly erred as to call upon us to reverse its determination. We, therefore, adopt, though we admit with some hesitation, the views of the state court, which lead to an affirmance of the judgments."

Said Mr. Justice White in dissenting:

> "I do not, moreover, dispute the principle that where the contract which is now asserted to have been impaired arises from a state law, it is the duty of the court, in case of doubt as to the meaning of the contract, to adopt the construction given to it by the state court. This rule does not imply that because the state court has decided against the contract right, therefore

there is doubt and, hence, the resulting duty to affirm the action of the state court. If such were the case, the power of this court to review the action of state courts concerning the alleged impairing of the obligations of a contract would be at any end wherever the contract took its origin in state law. The significance of the rule is this, that *if, fairly considering the issue of contract*, arising from the state law and its alleged impairment, *this court, in the exercise of its independent judgment, remains in doubt*, the decision below construing the state law will be allowed to solve the doubt, and thus secure the affirmance of the judgment."

A "property" statute "too plain to bear construction" suggests "no doubt," and by force of its own terms should be sufficient warrant against destruction of the property right so created; certainly such a statute *plus* 20 years' uniform *construction* of it re-affirming the right—should be sufficient, and "some to spare."

In the case of *Jones* v. *Buffalo Creek Coal Co., supra*, there was no such property right established by statute and construed by the State court. The plaintiffs there apparently proved a connected chain of title from an admittedly valid source. Added to this the court allowed them to offer evidence of certain suits as *res judicata*.

The action of the court attacked was a pure error in the admission of evidence, if an error at all.

In the first case cited under this point II, *C. B. & Q. R. R.* v. *Chicago*, 166 U. S. 226, this court was asked to review a ruling which was found *not* to be an *absolute* denial of a property right of the railroad company.

Here an absolute denial of the property right is involved.

As to the Page case (70 Ill. 324), we have analyzed it in our main brief, pp. 90-91, and elsewhere herein.

Point III.

The proposition as stated and in general terms is correct.

Such *is* the province of the State Legislature and State courts. But it is the province of *this* court, and *its* "right and duty" to save a property right from an *absolute or arbitrary* destruction or taking.

And while not primarily the right or duty of this court "to reduce the laws of the various states to uniformity," etc., nevertheless if a false, mischievous and destructive concept has gotten into the law of some of the states which this court is called upon to banish by its deliberate ruling and judgment, it certainly can be no cause for professional or communal heartburn that the cause of "uniformity" in legal rules of the various states *is* thereby and *pro tanto* incidentally advanced.

Speaking of the Saner case, 206 U. S. 536, it occurs to us that if it had come to this court a generation earlier, the result might have been different. The courts of a number of the states many years before had been thrown into radical error by the false concept of the word "property"—confusing *land*, the *subject* of property, with "property," the *right of dominion over* the land.

This court on a proper case presented unembar-

rassed by State Court contradictions, would no doubt have formally declared the true concept of the term. It was a law of *physics*. And the court would no doubt have held that the *right of dominion over* a tract or lot included the right of dominion over it *and its easements* and this as *a unit*. (§§1-4, pp. 70-72 of our brief.)

This attempt at separating things inseparable led to the other error (illustrated by the Sauer case) of making a distinction between the case of a public *municipality* taking for public purposes and the case of a taking by an authorized agent (as for instance a railroad company) for the *same* "public" purposes. Hence we believe that if presented on its original merits a case involving a radical change in the construction of a street, darkening the windows to the very top of an abutting house, and leaving a mere "slit in the sky" (dissenting opinion in the Sauer case), without rendering to the owner any "equivalent" of the property taken or damaged, would have been shocking enough to impel the interference of this court—and this no matter whether the public taking was by the public direct or by a corporation publicly authorized so to take.

We suggest, therefore, that if a ruling of a State court should conflict with a fixed law of *physics*, whether it be the law of gravitation or a law defining the *physical* limit or scope to private rights in a given instance an increase in "uniformity" in the law that might incidentally result from wiping out the error would be no cause for regret.

Point IV.

The distinction mentioned in Point IV applies merely to the method of asserting the claims and not to their merits. (Our brief, p. 8.)

Had the railroad company admitted in the beginning some damage—were it never so small or nominal—and desired to have the damage judicially ascertained, it would have had to have the inquiry conducted under the eminent domain statute.

Here the "actual existing situation" does show a physical damage, which is (1) obvious, (2) admitted by all the witnesses, as the State Supreme Court has said, and (3) estimatable and (4) estimated.

Whether this admitted damage shall be *speculated away* by a speculative element of evidence is the question.

This point, therefore, is inconclusive, it meets none advanced by us, and of itself seems to lead nowhere.

Point V.

The answer to this is many-featured.

1. The State Supreme Court did *not* either before or after McCoy's purchase so construe Section 9 as allowing "particular station benefits" to be considered. Not even in the Page case decided a few months after the act was passed. The court then erroneously allowed, as against the railroad, the "*enhanced value*," *i. e.*, enhanced by the road, and then it seemed to hold that this should be offset by the special "crossing" benefit within the *easement scope* of

the property. But this enhanced value concept was corrected later, and the "crossing" or "station" benefit idea never followed. That court expressly held the scope of the inquiry in these cases to be a "physical effect" scope and to exclude diversion of traffic from the vicinity (§ 10, p. 79, our brief).

2. Section 9 of the 1872 act prohibits the offsetting of *any* benefits or advantages, *i. e.*, "*no* benefits *or advantages* * * * shall be set off or deducted * * * in *any* case." It makes no distinction between a special travel benefit and a general one—that is, between "special-general" benefit and simply a "general" one.

3. If the 1872 statute is to be given any effect, it assumes that a "compensation" from which no deduction or offsetting must be had applies to a *net direct physical damaging effect*. If it went beyond this direct physical scope it would be meaningless. Hence it must be held that the statute had a *complete concept* as to "compensation," and a *physical concept* is the *only* one to which it could be applied. This being so, *all* benefit and advantages which were *not direct* must be held to have been excluded.

4. There is no practical division of "*travel* benefits" into "special" and "general" notwithstanding that the New York and Boston courts have tried to establish such rule. In such jurisdiction, however, such a rule has been aided by other rules, such as the burden of proof, by making the road prove the *specific* benefit, etc., from which or in consequence of which as a rule verdicts have been rendered for abutters. (Brief, pp. 62-3.)

See Mr. Demarest's sarcastic comment on "di-

rect" or "specific" station benefits, referred to *supra*.

5. Instructions of the defendants as to travel benefits covered the *entire loop* railroad and *all* stations on it.

6. Travel benefits from the railroad could only be from the Loop as *a whole;* and then

7. Only by considering the *aggregate benefit* which the Loop as an entirety gave to *the district*, and then *apportioning* same to the property in question, *i. e.*, attempting to so apportion, etc.

8. The Boston statute expressly included benefits "from the *location*" of the road. And as held in *State* v. *Evans*, 3 Ill. 208, benefit from the "location" of the road is a *neighborhood* benefit, while benefit from the "*construction*"—that is, the *plan* of construction—is direct and special.

9. The trial court in this case did not limit the evidence—that is, estimates or guesses—to "particular stations and special advertising benefits."

10. On the contrary, it *refused an instruction* so to limit such benefits. And the Supreme Court of Illinois affirmed this action.

11. This "station" or depot benefit is a fallacy. (Lewis, § 706, p. 1219.)

Point VI.

In this point counsel simply denies in effect the main proposition advanced by us. And the fallacy of calling *any* market increase, whether measurable or speculative,—i. e., a mere matter of *market in-*

12. But the Illinois Supreme Court has expressly repudiated and foreclosed this claim of "peculiar" traffic benefit.

It expressly ruled in the case of *Chicago vs. Spoor*, 190 Ill., 340, that *diversion of traffic* from the street immediately contiguous to the property—*i. e.*, *within* the "easement" or physical scope—was no *element of damage*. In that case a street viaduct had been erected *immediately in front of* the property and extending nearly the entire street block.

And in *Chicago vs. Jefferson*, 196 Ill., 496 (509, 510), which involved a subway constructed immediately in front of the abutter's premises, the court explicitly ruled that evidence of a diversion of traffic from the premises "*is not* a proper element for the consideration of the jury, *either* as an element of damage *or* as bearing upon the question whether access to the property had been interfered with by the change of grade."

pulse—"a special benefit" has been pointed out heretofore.

The purport of the Illinois decisions cited has all been anticipated in our main brief. All but the first two (in the 70 Ill.) are fully treated by us, pp. 90-91; outside of the *Metropolitan R. R.-Stickney* case, repeatedly referred to heretofore—they were cases decided subsequent to the time when the present cause of action arose. Such later cases, either singly or taken together, are as contradictory as the contradiction (Stickney case opinion) which they attempt to follow.

This Point VI of counsel seems to more squarely contradict the cardinal proposition advanced by plaintiffs in error than any other. But in doing so counsel ignores the *statute* of Illinois, and the whole line of 20 years' supporting decisions prior to the Stickney ruling, and then for some unaccountable reason cites Federal cases which seem to be *squarely against* his claim.

In *Bauman* v. *Ross*, 167 U. S. 548, it is distinctly held (as per No. 2 of syllabus) that "*contingent* and *speculative* benefits to arise in the future from the opening of the highway are *not* to be considered in reduction of damages in the condemnation proceedings," etc., and that "benefits as well as the damages are to be estimated as of the date of appropriation."

And then the court proceeds to hold (Syllabus 9) that "although Section 2" (should be Section 11) "of said act authorizes the deduction of benefits in assessing *damages*, Section 15 authorizes an *assessment for benefits.*" "*But these benefits are not*

the same"; "that the former relates to *special* and *direct* benefits to the portion of the land not taken, and the latter relates to the general benefits accruing to *all lands in the neighborhood.*"

In other words, a special assessment, as shown in our brief (par. 8, p. 74, and par 11, p. 79, and p. 100, Secs. (1) to (4), is for *neighborhood* benefit. And it is levied only for a *due proportion of cost* according to a due proportion of benefit within a specified and delimited district or neighborhood.

And so was the case of *U. S.* v. *Grizzard*, 180 U. S. 185, which holds in effect that destroying or impairing an easement of access is a taking or damaging of property—another distinct authority for our main proposition in this case.

Nor does the case of *French* v. *Barber Asphalt Paving Co.* (181 U. S. 324) help defendants in error. It holds that a street pavement can be paid for by an assessment or special tax upon abutting property according to its frontage—a rule which, if it had been universally adopted in the cities throughout the country, would, as it seems to us, have saved an enormous waste of complicated special assessment proceedings and trials. Such assessment proceedings are authorized and proceed upon the basis or principle or power of taxation. (Our brief, p. 79.)

The Peabody case, 191 Mass. 513, has been referred to heretofore.

Point VII.

This proposition begs the question at issue; and we simply add that since "damage" means a net "hurt or loss," from *direct* effects *considered as a blend*, so "benefit" can only mean a *direct* net benefit or a net increase in value from *direct* effects *considered as a blend*.

Point VIII.

The error in the first two sentences of this paragraph was pointed out in the Bigney case (64 Ill. 102). But this error has now only a historic interest in Illinois. For, since "property damaged" is as fully protected under the present Illinois Constitution and statutes as "property taken," "the question therefore, can only be"—what the question actually is, viz.: "How has this interference affected the value of the property, *i. e.*, whether the property was or was not 'damaged in fact.'"

Point IX.

This proposition is denied by our Points I and II. The real proposition should be stated the other way: That when a property owner suffers a special damage this should not be offset by the claim or "estimate" of the "appreciation in value from the public improvement"; and the statute of Illinois controls this issue.

Point X.

This proposition was once held to have been the law of Illinois prior to the present Constitution, and we repeat now is only of historic interest.

Transportation Co. v. *Chicago*, 99 U. S. 635, involved the construction of the La Salle street tunnel in Chicago, where the work was done *before* the Constitution of Illinois of 1870 took effect, (p. 641) and involved consequential damages for the impairment of street easements.

The Supreme Court of the state had held that the damages were only consequential for which no recovery could be had under the then constitution (1848).

But since the words "*or damaged*" have been added to the Constitution, to cover direct consequential injuries to the property, the value of this citation at this late day and in the present case is not seen.

The only interesting feature of the opinion is that it emphasizes the rule which prevailed in Illinois prior to 1870 under the constitutional term "property taken," as supported by the "weight of authority;" whereas the weight of authority is *now* recognized to be the other way. And how the Illinois courts as well as those of other states came to make the mistake is most ably pointed out in the Rigney case, 102 Ill. 64. And a recovery was lately had by an abutter for the rebuilding of this same tunnel and the judgment was affirmed by the Illinois Supreme Court in *Barnard* v. *Chicago*, 270 Ill. 27.

Point XI.

Such may be an "ordinary street *use*," but the structure amounts to a *radical change in construction* of the street; and the cause of action is well brought if damage in fact has occurred from the change in construction. This is settled law in Illinois under the "street grade" cases (led by the Rigney case) as well as under the Aldis "L" road case, 203 Ill. 567.

Point XII.

The first section begs the question as to what "beneficial" effects of *"the railroad"* are to be considered.

The second and third sentences do not clearly reveal their object of attack.

There is a direct physical effect from the mere structure, conceived as being unused, or as being put to a *silent use*, as for instance, the support of conduits for carrying city water or gas or other municipal appliances.

In other words, it would be *possible* to consider the structure as a permanent structure without the concept of a noisy use.

After this should have been estimated by the witnesses, it would have been possible for them to add to this estimated damage an additional damage from *the fact* that within the zone or extreme territory of easement rights there would be an almost constant noise from passing trains. Or these elements of structure *and* noise could be estimated together—as plaintiff's witness here estimated them.

Such a situation "is not unthinkable," nor is it impossible to estimate such physical and *direct* effect separately from the *indirect* privilege of the owner of the premises and his tenants and customers "to pay the road for the privilege" of riding upon the trains on the structure. The "unthinkable" thing in fact is to attempt to estimate the immediate market advantage from *direct* elements, *together* with such *indirect* travel benefits—in fact, to attempt to estimate the latter at all, separately or otherwise.

In other words, "determining from an existing condition" "whether there be damage or not" may be accurately *or* erroneously attempted. And to include in the scope of the inquiry both *direct and indirect* benefits was to include "a travel facility," whether it be "particular or otherwise." This was an attempt to offset one distinct item or physically-scoped aggregate of *direct* elements with another item or aggregate which were *indirect* and *speculative*.

CONCLUSION.

The effect of permanent "L" "stub terminals" without a Loop or other connection would undoubtedly have been to build up more trade centers, or about or near each terminal. A plan, therefore, of connecting the "L" roads so as to facilitate to the utmost degree interchange of this stub terminal traffic would change the travel trade influence over the *entire* Loop district,—taking some of the ante-Loop passengers away from certain corners or vicinities and establishing them at others.

Hence, the *entire* Loop operated *as a unit* in its production of passenger trade, and thus operated in influencing values of any tract or lot in the *entire* district.

The "travel benefit" if any, from the entire situation was this: The net market effect in October, 1897, arising from Loop travel established *and* promised *over* a similar effect arising from the downtown "L" travel *already* established and promised; and this was to be offset to the *damage* consisting of (1) the structural damage effect, and (2) the damaging effect from operation *as* established forever; and thus would be produced the net result in the entire case, *i. e.*, on a "travel benefit" basis.

For an expert witness to estimate—*i. e.*, to *guess*—that the former, entirely offset the latter, *as* established in October, 1897, would have been simply ridiculous.

Had this cause of action, which arose in October, 1897, been commenced on November 1, 1897, and the cause tried December 1, 1897, there would have been no *actual* travel increase to consider—according to figures. And defendants would have to claim that the investing public then *anticipated* all the travel of later years shown by these bewildering figures, and were also enabled then to estimate the *immediate* market effect from them *as* anticipated. So in this case "post-loop" passenger figures could only have been admitted upon the theory that the jury should assume that the investing public not only anticipated them but also accurately guessed their 1897 effect!

The brief of counsel taken as a whole seems to be a retreat from the position evidenced by the late rulings of the Supreme Court of the State of Illinois in these "L" cases.

Counsel seems now to take refuge in a "*particular station* benefit" to the property, and interprets the opinion of the Illinois Supreme Court in the present case as doing so in effect, by its reference to the number of revenue passengers at only the two stations nearest to the premises in question.

Now, there *must* be a *territorial scope* to the inquiry, no matter what *elements* are included therein; and it must be held *either* to the extreme *physical scope* of lot-and-easements, *or* it must be held to extend to the *entire neighborhood* or community served by this public railroad.

Had the Illinois court specifically held the "travel" issue to the *one station* in the particular block upon which the premises in question abut, then it would be following the Peabody case in Boston (191 Mass. 513), and substantially the practice in New York.

But the trial court did not confine the travel benefit evidence to such as would enable the jury to estimate or guess at the *particular* advantage of having a station immediately adjoining the premises, or within its extreme easement scope or limits,—*over a*, that of having it *immediately beyond* such scope, *or* over *b*, the advantage revealed by taking the *average distance* of stations on the Loop. (The latter would show the general plan of construction, the *average* convenience.)

There *is no middle ground* between confining par-

ticular station benefits to a station *within* the *physical scope* of lot and easement and taking in the *whole general district* or country served by the road in its entirety.

The latter basis seems now to be definitely abandoned by the counsel; and reasons why the former cannot be taken are scheduled below—all this in addition to the fact that there was no attempt to confine this record to such "particular station benefits" or what counsel calls a "special travel facility."

At this point, we refer again to "plaintiff's case in outline" (Brief, p. 43) and respectfully submit that it has been sustained.

The judgment of the Illinois Supreme Court should be reversed.

Respectfully submitted,

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FILED
JAN 22 1918
JAMES D. MAHER,
CLERK

No. 190

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1917.

HENRIETTA J. McCOY and JOHN R. CAVERLY, Executors of the Estate of WILLIAM A. McCOY, Deceased,

Plaintiffs in Error,

vs.

THE UNION ELEVATED RAILROAD COMPANY, THE LAKE STREET ELEVATED RAILROAD COMPANY, THE SOUTH SIDE ELEVATED RAILROAD COMPANY, THE NORTHWESTERN ELEVATED RAILROAD COMPANY, and THE METROPOLITAN WEST SIDE ELEVATED RAILROAD COMPANY,

Defendants in Error.

In Error to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

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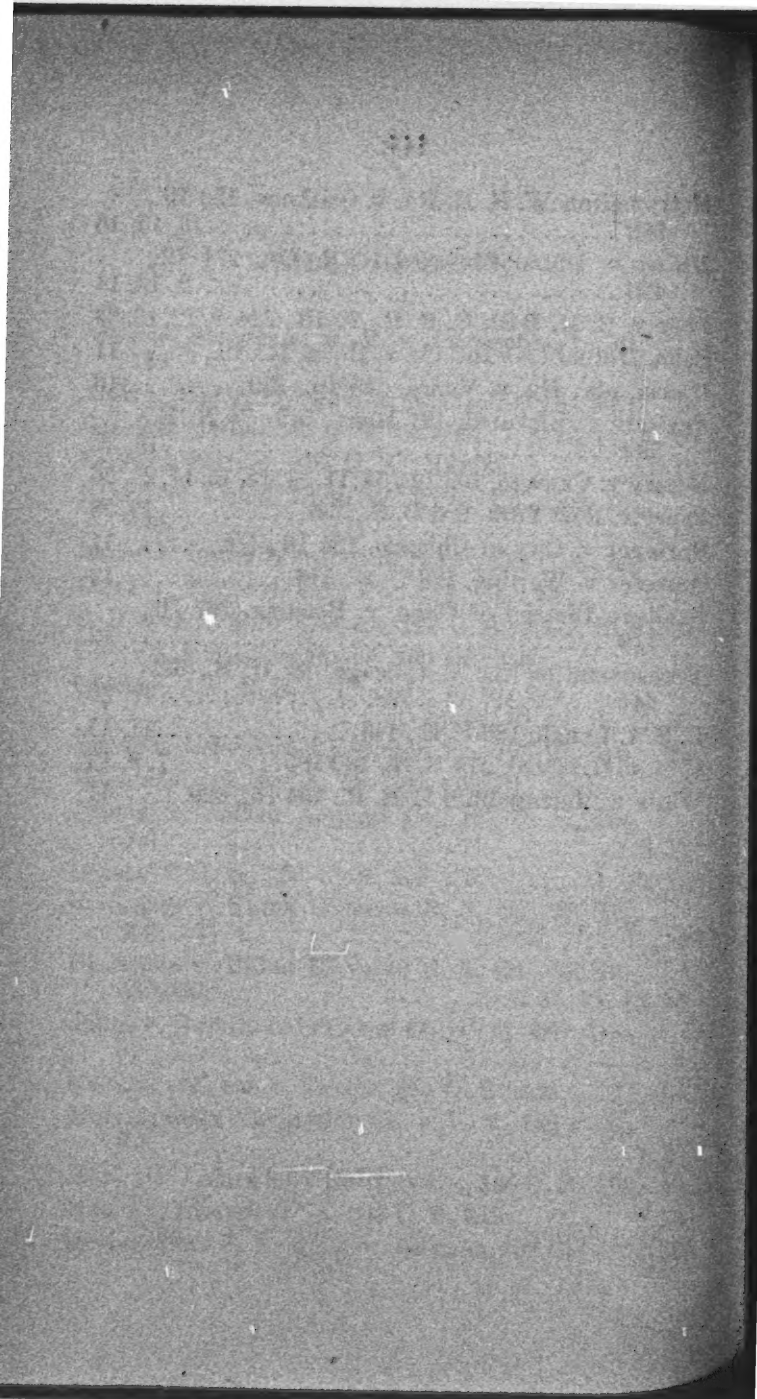

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1917.

BERNETTA J. McCOY and JOHN R. CAVERLY, Executors of the Estate of WILLIAM A. McCOY, Deceased,

Plaintiffs in Error,

vs.

THE UNION ELEVATED RAILROAD COMPANY, THE LAKE STREET ELEVATED RAILROAD COMPANY, THE SOUTH SIDE ELEVATED RAILROAD COMPANY, THE NORTHWESTERN ELEVATED RAILROAD COMPANY, and THE METROPOLITAN WEST SIDE ELEVATED RAILROAD COMPANY,

Defendants in Error.

In Error to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANTS IN ERROR.

STATEMENT.

The facts as disclosed by the record cannot be better stated than they have been by the Supreme Court of Illinois in its statement of facts in its opinion in this case. (*McCoy* v. *Union Elevated R. R.*, 271 Ill., 490; Printed Record, page 314.)

After describing the plaintiffs in error's premises and the system of terminals of the defendants' elevated railroads, as they existed prior to the extension of the road in front of the plaintiffs in error's premises and thereafter, and noting the establishment of two passenger stations on the elevated railroad, one about 100 feet west of the plaintiffs

in error's property, and one about 300 feet east of the plaintiffs' in error's property, both on the same street on which plaintiffs in error's property abuts, the court continued (page 493):

"The elevated structure in Van Buren street obstructed the passage of light to the store rooms in McCoy's building, and the noise from the passage of trains over the structure and the fact that passing trains were on a level with the windows of the second floor of the building rendered the rooms on the south side of the second and third floors of the building less desirable for hotel purposes. Large upright columns supporting the elevated structure were placed just inside the curb in front of the premises and rendered the premises less accessible from the street.

"There is no material controversy over the facts in the case. The witnesses all agree that the matters above mentioned, when considered by themselves, would be detrimental to the premises. They also agree that there was a steady increase of from five to ten per cent per year in the value of the premises from the construction of the loop until 1905. It also appears from the evidence that the rents from the store rooms on the ground floor constantly increased after 1897. *The plaintiff called but one real estate expert as a witness.* He testified that the damages to the property from the construction of the elevated structure, and the operation of the trains thereon amounted to $81,999, being fifteen per cent of the value which the witness placed upon the interest of McCoy in the premises. *He admitted that there had been a continuous increase in the value of the premises since the completion of the loop, and that a portion of that increase, which he said it was impossible to estimate, was due to the increased travel brought to the premises by the elevated railroad, but that he did not take that into con-*

sideration in fixing the damages. The real estate experts called by the defendants, on the other hand, testified that at least one-half of the increase in the value of the premises was due to the increased travel in front of the premises resulting from the operation of the elevated railroad in Van Buren street as a part of the loop. In support of the testimony of these witnesses defendants proved that the number of persons boarding the elevated trains at the La Salle street station in Van Buren street, during the three months of the year 1897 in which trains were operated around the loop, was 161,763, and that the number constantly increased until in 1905 there were 3,659,583 persons who boarded the trains at that station. It was also shown that during the period in 1897 above mentioned 194,904 persons boarded the elevated trains at the Dearborn street station, in Van Buren street, and that the number constantly increased each year until in 1905 there were 2,558,976 persons who boarded the trains at that station.

"The contention made by plaintiffs in error upon which most of the assignments of error depend is that the benefits to the premises by reason of the increased travel in front of the premises resulting from the operation of the elevated railroad in Van Buren street as a part of the loop cannot be considered in determining whether the premises have been damaged by the construction of the elevated structure and the operation of trains thereon, first, because such benefits are general benefits, common to all the property in the vicinity; and, second, because such benefits are conjectural and speculative."

This case is presented to this court by the same counsel who represented the plaintiff in error in the case of *Brand* v. *Union Elevated R. R. Co.*, 238 U. S.,

596, and they present the same question that was presented there.

The chief difference in the records is that the plaintiff admitted in the *Brand* case that his property was not lessened in market value by the construction and operation of defendant's railroad, while in this, the *McCoy* case, plaintiffs' witness gives an estimate of the damage claimed, unaffected by any question of market value, at the same time admitting that the market value had not been decreased but rather increased, chiefly on account of the two passenger stations adjacent to the premises.

In this *McCoy* case the defendants introduced evidence of the special advantages to the plaintiffs in error's property through the use by the public of the two passenger stations adjacent thereto. Counsel for plaintiffs in error contended that this evidence should not have been admitted because he claimed it was evidence of a general benefit.

All the evidence was allowed to go to the jury under proper instructions defining to them what would constitute a general benefit and what would constitute a special benefit. (Printed Record, page 290.)

Instruction 14 was in the following words:

> "Special benefits are such benefits as are special or peculiar to a particular piece of property, and which beneficially affect its fair, cash, market value, as distinguished from those benefits which are common to the public at large, and which are termed general benefits; and you are instructed that in determining the effect of the construction, maintenance and operation of defendants' elevated railroad upon the fair, cash, market value of plaintiffs' said premises,

you are not to take into consideration any general benefits which you may believe from the evidence to have arisen out of the construction, maintenance and operation of said elevated railroad, but you should take into consideration special benefits, if any, shown by the evidence, to plaintiffs' said premises from the construction, maintenance and operation of defendants' said elevated railroad."

(See also printed record, pages 289, 290 and 291, for other instructions covering this question.)

The jury found the defendants not guilty and awarded no damages to the plaintiffs in error.

Plaintiffs in error now contend that the announcement by the *nisi prius* court of the rule of law which permitted the introduction of defendants' testimony in regard to station benefits, results in the taking of their property without just compensation, because, they contend, these benefits as a matter of law should be classed as general or community benefits, to which the property was of right entitled.

It will be noted that no question of actual damage, from an actual existing situation, exists.

Counsel's contention in reality amounts merely to a demand that this court should act as a jury, consider the evidence and say that this evidence is evidence of a general and not a special benefit.

The question which it is sought to have this court pass upon is in its essence merely a definition of special and general benefits in this class of cases and the application of such definition.

We do not understand that counsel for plaintiffs in error contend that this court has at any time an-

nounced in estimating damages in these abutter's cases or in Eminent Domain proceedings that special benefits should not be considered, nor do we understand even the dissenting opinion in the *Brand* case, *supra*, to in any way intimate that such should be the law. This court has declared directly to the contrary in *Bauman* v. *Ross*, 167 U. S. 548-584, and in *United States* v. *Grizzard*, 219 U. S., 180-185, and in other cases hereinafter called to the attention of the court.

We believe it is necessary to emphasize that it is a matter of definition and an examination of testimony by this court which counsel for plaintiff in error presents. Running all through the statement of facts in plaintiff in error's brief is the inference that what the witnesses testified to was a general or community travel facility benefit and that they did not and could not distinguish between the general travel conditions affecting this property before the loop was built and the special travel facility conditions and benefits affecting this property after the construction of the elevated railroad in front of the premises and the establishment of the two adjacent stations.

While the Supreme Court of Illinois has found that the testimony of the witnesses as to benefits was of a special benefit due to the adjacent stations, we append a few of the questions and answers of each of the witnesses taken from the record as filed which conclusively show that what the witnesses testified to were the particular station benefits as distinguished from the general or community benefit

which the property also received. (See Appendix.) The record shows that the evidence admitted was neither speculative or of an intangible nature.

The defendants in error, to meet the claims and arguments of plaintiffs in error, rely upon the following points and authorities:

Point I.

The Constitution of the United States contains no express prohibition against considering benefits in estimating the just compensation to be paid for property taken for public use and no such prohibition can be implied.

So-called general or community benefits are excluded alone under the general rules of evidence relating to testimony which is of speculative and intangible nature.

When the part retained is specially and directly increased in value by the public improvement, the damages to the whole parcel by the appropriation are lessened.

Bauman v. *Ross*, 167 U. S., 548-584.

Monongahela Nav. Co. v. *U. S.*, 148 U. S., 312.

French v. *Barber Asphalt Co.*, 181 U. S., 324-341.

U. S. v. *Grizzard*, 219 U. S., 180-185.

Point II.

The Constitution of Illinois contains no express prohibition against the consideration of benefits, and none is implied. The definition by the Illinois Supreme Court of the terms "general" and "special benefits" as applied in the assessment of damages to abutting property, by reason of the construction and operation of a public improvement in the street in front thereof, and the application of such definition to particular facts, either by leaving the determination of whether such facts constitute special or general benefits, under all the evidence, to the jury, under proper instructions, or through holding, as a matter of law, that a given set of facts constitute one or the other, is purely a state question and not subject to review by the United States Supreme Court.

7th Amendment to U. S. Constitution.

C. B. & Q. v. *Chicago*, 166 U. S., 226.

Page v. *C. M. & St. P. R. R.*, 70 Ill., 324.

Cases under Point I.

Jones v. *Buffalo Creek Coal Co.*, decided by this court Dec. 10, 1917, U. S. Adv. Op. 1917, p. 91.

Point III.

It is within the province of the courts and legislature of the respective states to fix by legislation and judicial decision the rights of abutting property owners in accordance with their own views of the law and public policy, and the United States Supreme Court has neither the right nor the duty to reduce the laws of the various states to uniformity.

Sauer v. *N. Y.*, 206 U. S., 536.
Morley v. *Lake Shore Ry. Co.*, 146 U. S., 162.
Moore v. *Electrical Co.*, 234 U. S., 619.

Point IV.

Suits for damages for consequential injuries caused by the construction of a public improvement are distinguished from suits for the estimation of just compensation to be paid for property taken under eminent domain proceedings, and this distinction is not only clearly recognized under the Constitution of Illinois but also by the decisions of this court under the United States Constitution.

In the former class, to which the suit at bar belongs, the suit may not be brought until after the construction of the improvement and it is determinable from an actual existing situation whether damage has in fact been caused.

Bedford v. *U. S* 192 U. S., 217-224.
U. S. v. *Lynah*, 188 U. S., 445.
Gibson v. *U. S.*, 166 U. S., 269-275.
Rigney v. *Chicago*, 102 Ill., 64.
Springer v. *City of Chicago*, 135 Ill., 552.
White v. *Metropolitan E. R. R. Co.*, 154 Ill., 620.
Metropolitan E. R. R. Co. v. *Johnson*, 159 Ill., 434.
Penn Mutual Life Ins. Co. v. *Heiss*, 141 Ill., 35.
City of Chicago v. *Spoor*, 190 Ill., 340.
Geohegan v. *Union E. R. R. Co.*, 258 Ill., 352.
Geohegan v. *Union E. R. R. Co.*, 266 Ill., 482.
Brand v. *Union L.*, 258 Ill., 133.

Point V.

Even though the interference with the light and access from the street to plaintiffs' property, caused by defendants' railroad, be considered as a taking of a public or private right enjoyed by the property owner for which compensation should be paid, as in eminent domain cases, still on the showing of the particular station and special advertising benefits accruing to plaintiffs' property the Supreme Court of Illinois has the right to construe the statutes of the state and show that Sec. 9 of the Eminent Domain Act did not and was not intended to mean that in considering the amount of damage caused, the consideration of such special advantages should be excluded.

Bauman v. *Ross*, 167 U. S., 549.
Schaefer v. *Werling*, 188 U. S., 516.
Keokee, etc., Co. v. *Taylor*, 234 U. S., 224.

(Said Sec. 9 construed:)

Page v. *C. M. & St. P. Ry. Co.*, 70 Ill., 324.
Metropolitan W. S. Ry. v. *Stickney*, 150 Ill., 362.
Brand v. *Union Elevated Ry. Co.*, 258 Ill., 133.
Geohegan v. *Union Elevated Ry. Co.*, 266 Ill., 482-499.
Sanitary Dist. v. *Boening*, 267 Ill., 118.

Point VI.

Particular advantages to particular property along the line of a public improvement must of necessity be special to such property and cannot be community or general benefits because neither the public, nor all the property affected by the improvement, can share in the special market value increases of such property due to such particular advantages.

Travel facilities which by the establishment of stations result in disbursing large numbers of people over and along the street in front of abutting property, or which make such property more accessible, or which change its character, so as to immediately greatly increase its actual market value so it will sell for more on the market are special benefits.

Chgo., etc., Railroad Co. v. *Francis*, 70 Ill., 238.

Page v. *Chicago, M. & St. P. Ry. Co.*, 70 Ill., 324.

Metropolitan, etc., Ry. v. *Stickney*, 150 Ill., 362.

Peoria, etc., Ry. v. *Vance*, 225 Ill., 270.

Eldorado, etc., Ry. v. *Everett*, 259 Ill., 529.

Geohegan v. *Union Elevated*, 258 Ill., 352.

Brand v. *Union Elevated*, 258 Ill., 133.

Geohegan v. *Union Elevated*, 266 Ill., 482-499.

McCoy v. *Union Elevated*, 271 Ill., 490.

Bauman v. *Ross*, 166 U. S., 548-584.

French v. *Barber Asphalt Co.*, 181 U. S., 324-341.

U. S. v. *Grizzard*, 219 U. S., 180-185.

Peabody v. *L.*, 191 Mass., 513; 78 N. E. R., 392.

Point VII.

The word "damage" as used in the Illinois Constitution of 1872 is to be taken in its ordinary and usual sense and means hurt or loss, so that if an abutting property owner has suffered no loss by reason of the construction of an elevated railroad in the street in front of his property he has suffered no damage under the Constitution of the state.

Chicago & Pacific R. R. Co. v. *Francis*, 70 Ill., 238.

Rigney v. *Chicago*, 102 Ill., 64.

Geohegan v. *Union L.*, 258 Ill., 352.

Brand v. *Union L.*, 258 Ill., 133.

Geohegan v. *Union Elevated*, 266 Ill., 482.

McCoy v. *Union L.*, 271 Ill., 490.

Point VIII.

No property is taken in the constitutional or statutory sense by an interference with the easements appurtenant thereto. The use may be impaired but the easements are not destroyed. The question, therefore, can only be, where recovery for consequential damages is allowed, how has this interference in fact affected the value of the property, *i. e.*, damaged it in fact.

Gibson v. *U. S.*, 166 U. S., 269-275.
United States v. *Lynah*, 188 U. S., 445.
Bedford v. *United States*, 192 U. S., 217.
Chicago, etc., Ry. v. *Francis*, 70 Ill., 238.
Rigney v. *Chicago*, 102 Ill., 64.
Metropolitan W. S. E. Ry. Co. v. *Stickney*, 150 Ill., 362.

Point IX.

The owners of abutting property have no right to and no ownership in an appreciation to the value of their property due to the construction of a public improvement in the street in front thereof.

Railroad v. *Carpenter*, 14 Ill., 189.
Chicago, etc., Ry. Co. v. *Francis*, 70 Ill., 328.
Rigney v. *Chicago*, 102 Ill., 64.
Metropolitan W. S. E. Ry. Co. v. *Stickney*, 150 Ill., 362.

Point X.

Prior to the change in the Illinois Constitution in 1872, when the words "or damaged" were added to the clause "private property shall not be taken (or damaged) for public use without just compensation," an abutting property owner had no redress by reason of any lawful street use in the construction of an improvement in the street or of the street itself. Interference with his easements, if any, was considered *damnum absque injuria*.

Rigney v. *Chicago*, 102 Ill., 64.

Transportation Co. v. *Chicago*, 99 U. S., 635-641.

Point XI.

The construction and operation of an elevated railroad in the public streets of the City of Chicago is an ordinary street use and not an additional servitude or burden on the street.

Doane v. *Lake Street E. R. R. Co.*, 165 Ill., 510.

Bond v. *Pennsylvania Co.*, 171 Ill., 508.

Aldis v. *Union Elevated Railroad*, 203 Ill., 567.

Point XII.

Damage to an abutter's property, if any, by reason of the construction, maintenance and operation of defendants' railroad cannot be determined without the consideration of the beneficial effects of the railroad. The fact of the construction, maintenance and operation of the railroad creates a present existing situation and it is not rationally possible to intelligently speculate on the effect of a non-existent, unthinkable situation such as the presence of the structure for railroad purposes without use as such. The consideration of the particular beneficial effects is not and cannot be dependent upon a consideration, first, of the damage of the unused structure and then of the benefit from its use. The consideration of the particular travel facility benefits to the particular property is not off-setting benefits against damages, but is determining from an existing condition whether there be damage or not, by ascertaining the value of the property immediately before the improvement and the value immediately after, as specially affected by the improvement.

Chicago, etc., R. R. v. *Francis*, 70 Ill., 238, and other cases cited *supra*.

ARGUMENT.

It seems to us that, at the very threshold of the consideration of the right or duty of this court to re-examine the verdict of the jury and the judgment of the court on the same, as sustained by the Illinois Supreme Court, we are met with the inhibition of the 7th Amendment to the United States Constitution, which provides:

> "In suits at common law, where the value in controversy shall exceed $20.00, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law."

This court has held that this inhibition applies to its consideration of suits coming before it on writs of error from state courts. *C. B. & Q. R. R. Co.* v. *Chicago*, 166 U. S., 226-242.

The record in the case at bar shows that the plaintiffs were not denied the admission of any evidence on their theory of the case, and that the jury, under proper instructions by the court, considered all the evidence and found as a matter of fact that the plaintiff's premises were not damaged.

The 1870 Constitution of Illinois provides:

> "Such compensation, when not made by the state, shall be ascertained by a jury, as shall be prescribed by law."

The plaintiffs had the question of the amount of compensation to which they should be entitled submitted to a jury in the manner prescribed by law.

Under the decisions of this court, the Illinois Supreme Court is the judge of the meaning of the constitution and statutes of its own state; and when the Illinois Supreme Court announced, as it did in *Francis* v. *C. P. R. R. Co.*, 70 Ill., 238, and *Rigney* v. *Chicago*, 102 Ill., 64, and many subsequent cases, that when the constitution of the state, as adopted in 1870, provided that

> "Private property shall not be taken or damaged without just compensation,"

the added word "damaged" was used to embrace a class of cases which theretofore had not been considered as coming within the purview of the taking or damaging of property through the exercise of the right of Eminent Domain, and that, in the enforcement of this new right, the property owner, seeking recovery for damages thus secured to him, was relegated to his suit at law for such actual loss as he had sustained, and that the damages must be actual, real and present and not theoretical or speculative, the court prescribed the law which the language of the constitution said should guide the jury in fixing the amount of compensation.

The rules in regard to the admission of testimony in fixing what should be considered by the jury in determining this compensation are purely matters which concern the state of Illinois and, as this court said in the *Burlington* case, *supra*, 166 U. S., 226; page 246:

> "We are permitted only to inquire whether the trial court prescribed any rule of law for the guidance of the jury that was in *absolute* disregard of the company's right to just compensation, * * * because we do not wish

to be understood as holding that every order or ruling of the state court in a case like this may be reviewed here."

And, as this court also said in that opinion, (page 246):

"Even though we are of the opinion, in view of the evidence, that the jury erred in finding that no property right of substantial value in money had been taken from the railroad company by reason of the opening of a street across its right of way, we cannot, on that ground, re-examine the final judgment of the state court."

Even admitting the contention, for the sake of the argument, which is made by counsel for plaintiff in error, that the proceeding in the case at bar is, in its essence, an Eminent Domain proceeding, although not prosecuted as prescribed in the Eminent Domain statutes, and that, for that reason, as is stated in Section 9 of the Eminent Domain Act, "no benefit or advantage which may accrue to the property affected shall be set off against or deducted from such compensation in any case," still, the Supreme Court of Illinois, having declared that that language does not preclude the consideration by the jury of evidence tending to show special benefits or advantages, as distinguished from the general or community benefits, which it was held alone are meant by the statute in question, (see cases cited under Point 5), this court is not, by reason of that fact, authorized to re-examine the verdict and judgment, because the construction by the Illinois Supreme Court of the statutes of the state of Illinois is binding upon this court.

The only remaining question then would be, as stated in the *Burlington* v. *Chicago* case, 166 U. S., 226-246, as to whether the rule announced by the court (admitting evidence as in this case), was in *absolute* disregard of plaintiff in error's right to compensation.

What the court did was to allow testimony of what the defendants contended and what the witnesses stated and what the trial court and Supreme Court of Illinois believed and held, to be direct, concrete, actual benefits from defendants' improvement to plaintiffs in error's property, which were entirely special as to it.

Counsel, through their general statement of the facts, might lead this court to infer that the evidence of the particular beneficial effects upon the value of plaintiffs in error's property arising immediately from the construction, use and operation of the elevated railroad in front of it, were not directly testified to, when the fact is that the record discloses and the Supreme Court of Illinois found in its opinion that the defendants' witnesses testified to the direct enhancement in value occasioned the property through the beneficial effects of the two adjacent stations. Counsel's statement in regard to the general travel, before the construction of the railroad, to the downtown district of Chicago being approximately the same as that brought to the downtown district in the first few months after the construction of a portion of the elevated structure in front of plaintiffs in error's property, if true, should not divert the attention of the court

from the fact that the persons composing this travel prior to the construction of the elevated railroad in front of plaintiffs' premises were deposited and taken up at points varying from one-quarter to a mile and one-quarter from his premises, whereas immediately upon the construction of the elevated railroad in front of the premises these persons were conveyed by the property and many hundreds of thousands of them deposited immediately in front of it.

Counsel's statement in regard to the rental value of the premises should not lead this court to infer that the premises in question were rented for no more or for less immediately after the construction of the elevated railroad in front of plaintiffs in error's property than they were before, because the fact is that the rents continually increased and this fact is found by the Supreme Court of Illinois in its opinion.

In their entire argument, counsel disregard the one important element in this case of the two stations adjacent to this property, which affected it in a very special and particular way.

While we feel that the record in this case does not disclose any such state of facts as warrants an extended discussion of the theory of special and general benefits and special and general damages and that such discussion is largely academic, still, in view of the elaborate argument prepared by counsel for plaintiff in error, we answer this argument briefly.

This court has, on several occasions, been required to consider rules for compensation where property has been damaged through the construction of public improvements and where only a part of a tract has been appropriated.

In referring to this general subject, Justice Brewer said, in *Monongahela* v. *U. S.*, 148 U. S., 312:

> "This excludes the taking into account as an element in the compensation any supposed benefit that the owner may receive in common with all from the public uses to which his property is appropriated."

But he immediately followed this declaration by stating:

> "We do not in this refer to the case where only a portion of a tract is taken, or express any opinion on the vexed question as to the extent to which the benefits or injuries to the portion not taken may be brought into consideration."

While this opinion apparently holds that general or speculative benefits should not be given consideration in estimating the just compensation to be paid for the part actually taken, it will be noted that it went no farther, and that nothing was said either about what benefits should be considered in the case of the estimation of damages to the remainder or as to how the amount of damage in the case of consequential injuries should be arrived at.

Shortly thereafter, in the case of *Bauman* v. *Ross*, 167 U. S., 548, this court had occasion to consider the question of the propriety of allowing the consideration of benefits in estimating the value of the part

taken and a very exhaustive opinion, discussing the whole subject of benefits and damages, was written by Justice Gray and he announced as the opinion of this court that under the United States constitutional provision for just compensation that it was proper to allow consideration of the fact that when part is taken the remainder may be especially and directly increased in value by the improvement and that the damages to the whole by the appropriation of a part may be thus lessened by this consideration. (See page 574, *et seq.*)

It should be further borne in mind that in Illinois the Supreme Court of the state has expressly declared that suits by an abutter for the consequential damages to his property by reason of the construction of the improvement in the street in front of it are suits at law for damages and not suits brought under the procedure provided by the Legislature for the fixing of compensation in the case of appropriation under Eminent Domain proceedings; the distinction has always been clearly made that the question at issue in these abutters cases is whether there has been a damage in fact. (See cases under Points IV and VII.)

This distinction which the Illinois Supreme Court has made under the constitution and statutes of Illinois is not an arbitrary one and this court itself has recognized this very distinction under the United States constitutional provision in regard to the taking of property, and in the case of *United States* v. *Lynah*, 188 U. S., 466, and in the case of *Bedford* v. *United States*, 192 U. S., 217-224, and in a number of other cases this court pointed out this distinction. As

this court stated, an excellent illustration is found in *Gibson* v. *United States*, 166 U. S., 269. We note extracts from the case of *Transportation Co.* v. *Chicago*, 99 U. S., 635-641, which we think in point:

> "But acts done in the proper exercise of governmental powers, and not directly encroaching upon private property, though their consequences may impair its use, are universally held not to be a taking within the meaning of the constitutional provision. They do not entitle the owner of such property to compensation from the state or its agents, or give him any right of action. This is supported by an immense weight of authority.
>
> "This prerogative would amount to nothing if it does not protect the agent for improving highways which the state is compelled to employ. The remedy, therefore, for a consequential injury, resulting from the state's action, through its agents, if there be any, must be that and that only, which the Legislature shall give. It does not exist at common law."

In Massachusetts station benefits are required to be considered, and in *Peabody* v. *"L,"* 191 Mass., 513, the Massachusetts Supreme Court distinctly held that a station benefit to the Essex Hotel should be set off and then said:

> "The mere fact that the general public received similar advantage does not make them less a matter of set off, if the petitioner's property receives from them a benefit or advantage beyond the advantage to all the land in the city."

In this state of the law, as announced by this court and by the highest courts in Massachusetts and in other states, as is pointed out in the opinion

in the *Bauman* case, *supra*, can it be said that there was an absolute disregard of the right of plaintiffs' in error to compensation in the trial court permitting the jury to consider the effect of the two adjacent stations as specially benefiting plaintiff in error's property, under proper instructions not to give any weight or consideration to any general or community benefits?

In fact is not the language of this court in *Sauer* v. *New York*, 206 U. S., 536-546, especially in point here?

> "The rights of an owner of land abutting on public highways has been a fruitful source of litigation in the courts of all the states, and the decisions have been conflicting and often in the same state irreconciliable in principle; the courts have modified or overruled their own decisions, and each state has in the end fixed and limited by legisaltion or judicial decision the rights of abutting property owners, in accordance with its own view of the law and public policy. As has already been pointed out, this court has neither the right nor the duty to reconcile these conflicting decisions, nor to reduce the law of the various states to a uniform rule which it shall announce and impose."

So far as we are aware, no where in the cases which have been before the highest tribunals of the states is there a more lucid discussion and exposition of the real principles involved in this question of the right to and the measure of compensation for consequential injuries to property, the physical *res* of which is not invaded, than in the case of *Rigney* v. *City of Chicago*, 102 Ill., 64, in which both the exhaustive majority opinion and the concurring opin-

ion illumine the subject and clearly explain the different meanings of the term "property" which accounts for the apparent confusion in the cases.

In the Illinois Constitution of 1848, the provision was:

> "Nor shall any man's property be taken or applied to public use without the consent of his representatives in the General Assembly, nor without just compensation being made to him,"

and under the limitations of this provision, the Illinois Supreme Court held, as explained in the *Rigney* case, that the constitutional provision extended only to cases of actual appropriation of private property and that it had no application where the injury was consequential, unless that injury was by reason of some direct physical interference with the *res*. In other words, under the Constitution of 1848, compensation should be awarded where property was actually taken from the owner, or where the remainder, or in some cases abutting property, was physically invaded by reason of the construction of an improvement, through the casting of dirt and ashes upon it or vibrating it, to the physical injury of its improvements, or causing water to back up which otherwise would have had a natural outlet, and other similar cases of physical disturbance, but that where the injury complained of was due to the interference by the improvement with certain easements which the property enjoyed in common with the public, such as the cutting off of access or the interference with light, which did not cause the *res* of the property affected to be physically invaded in any way, was a damage without legal injury.

The test under the 1848 Constitution of Illinois was whether there had been an actual physical invasion of the property (the *res*) affected. This test, as applied to the actual cases, frequently excluded cases where there was no actual physical injury to the property but where the approaches to it were so cut off and destroyed as to leave it almost valueless. So when, in the 1870 Constitution of Illinois, the wording was changed so as to read—

> "Private property shall not be taken or *damaged* for public use without just compensation,"

the Supreme Court of Illinois, through the *Rigney* case, *supra*, held that the addition of the word "damaged" declared a new rule of law from which sprang new rights which did not exist formerly; and the question which was discussed in the *Rigney* case was what additional class of cases was thus provided for by the changed wording, and they said (102 Ill., page 80):

> "We think it clear that it was not intended to reach every possible injury that might be occasioned by a public improvement. * * * So as to an obstruction in a public street, if it does not *practically* affect the use or enjoyment of neighboring property, and thereby impair its value, no action will lie. In all cases, to warrant a recovery it must appear there has been some direct physical disturbance of a *right*, either public or private, which the plaintiff enjoys in connection with his property, and which gives to it an additional value, and that by reason of such disturbance he has sustained a special damage with respect to his property in excess of that sustained by the public generally."

In the rule, as announced by the Illinois Supreme Court in the *Rigney* case, the fact that there may be a general damage through the construction of an improvement, which affects the public generally and is distinguished from the special damage which has been occasioned special property in excess of the public damage, is clearly recognized and the recovery limited to the amount of the special damage.

The distinction between general and special damages, as thus made clear, of necessity brings up the corresponding distinction between general and special benefits; the one, in connection with injuries caused by public improvements, is of necessity a corollary of the other.

When it is remembered that the law of Illinois prior to the 1870 Constitution denied all recovery for consequential injuries, and this was remedied by the addition of the word "damaged" in the 1870 Constitution, the importance of the pronouncement of the Supreme Court of Illinois as to what class of cases are involved by reason of this change in the Constitution, becomes apparent, and the *Rigney* case, as above shown, finds what this class was and gave the rule; and in the discussion in the *Rigney* case reference is specifically made to the first case which arose under the added word "damaged" as it appears in the 1870 Constitution, and stated that the principles of the rule announced are fully recognized in the former decisions of the Supreme Court of Illinois, citing the case of *Chicago & Pacific Ry. Co.* v. *Francis,* 70 Ill., 238. In the *Francis* case the inquiry before the court was whether, under the Constitution of 1870, any damages should be assessed,

and they asked themselves "What is the meaning of the word 'damaged' as used" and said, 70 Ill., 239:

> "We must presume that it was used in its ordinary sense, which is hurt, injury or loss. Now we cannot suppose that the framers of that instrument intended it in any other sense than loss or depreciation in the property damaged; that the damage or injury should be real, and not imaginary or speculative."

And on page 240 they state:

> "This provision must receive a reasonable and practical interpretation; but if that contended for by appellee were given, it would become ruinous to such companies, as they would be compelled to pay in damages enough to each property holder whose property was not benefited to as great an extent as that which is most favorably situated, and has been most advanced in value, so as to make them equal."

In this case appellee had purchased some lots fronting on Bloomingdale avenue in Chicago, supposing that the railroad would be located in the next street, or Armitage avenue. Instead, however, the railroad was put down in Bloomingdale avenue and the owner sought to enjoin the construction until he had been paid what he contended were his damages. The evidence showed that there was no diminution in the market value over what he paid by reason of the location of the road; but he contended that he was entitled to an appreciation in the value of the land because the property on the adjacent streets appreciated by reason of the location of the road, and the court again, in its opinion, page 240, said:

> "Suppose, when the depot is built and established, property in its vicinity should be ad-

vanced thereby several hundred per cent, would appellee insist he was damaged to the same per cent on his property? We presume that he would not; and yet we fail to perceive the difference in principle, and we think there can be none. *We must, therefore, hold that the damage contemplated by the constitution must be an actual diminution of present value, or of price, caused by constructing the road, or a physical injury to the property, that renders it less valuable in the market, if offered for sale. It must be real, and not speculative damages.*"

As above stated, this language was expressly affirmed in the *Rigney* case, and Chief Justice Dicky in his concurring opinion in the *Rigney* case said, 102 Ill., 84:

"The right of action does not depend upon the distance between the lot and the improvement. This depends upon the nature and character of the improvement, *and upon the question whether the property of the complainant is materially damaged in fact.*"

As is shown from these two cases and others referred to in these opinions, and the later opinions of the Illinois Supreme Court, cited under our points, the question is "*damage in fact*" and not the offsetting of benefits against damages, but it is apparent from the opinions that as under the rule general or speculative damage would not be compensated for, general or speculative benefits would not be allowed consideration.

It so happens that at the same term of court at which the *Francis* case, *supra*, was decided, there was also decided the case of *Page* v. *C. M. & St. P.*

Ry. Co., 70 Ill., 324. This case, however, was an eminent domain proceeding, brought under the Eminent Domain Statutes of the state, Section 9 of which follows:

> "Said jury shall go upon the land sought to be taken or damaged, and after hearing the proof offered make their report in writing, so as to clearly set forth and show the compensation ascertained to each person thereto entitled. Provided, that no benefit or advantages which may accrue to lands or property affected shall be set off against or deducted from such compensation in any case."

This *Page* case was the first case arising under the new Eminent Domain Statutes which contained this Section 9.

In the proceeding a part of the land was taken and the question was the amount of the damage to the remainder of the tract. The court recites the constitutional provision and Section 9 of the Eminent Domain Statutes. The evidence showed that by reason of the building of the defendant's railroad access was given plaintiff's property to the City of Chicago in such a way as to make it suburban property, increasing its value from $500 to $1,000 an acre, and it also appeared that on account of a nearby railroad crossing, an opportunity was afforded for passengers to alight from and embark on trains adjacent to plaintiff's property, and such privilege was shown to be a great advantage to the land around it. The court states that it had given some consideration to the subject of damages in the *Francis* case and then say (page 328) that "it is admitted

that any mere general and public benefit or increase in value received by the land in common with other lands in the neighborhood is not to be taken into consideration in estimating the compensation"; and also stated that it was "claimed that considering evidence of the effect of the crossing was an infringement of this rule, because the advantages of the crossing * * * extended to some other"—tracts of land; but the court said the testimony showed the beneficial effect of the crossing to be so limited in extent that the fact of its not being confined to the plaintiff's tract did not deprive the crossing of a local and peculiar benefit to the land; and the opinion holds that notwithstanding the language of Section 9 such special benefits should be allowed consideration.

Has any other or different rule been announced in the case at bar?

It will be seen that the effect of this decision was to announce practically the same rule for determining the amount of damage to the remainder under the Eminent Domain statutes of the state, as the court had announced for the estimation of the damages meant by the constitution in the new class of cases which were brought within its terms by the change. It is not surprising, therefore, that thereafter in the decisions of the Supreme Court of Illinois reference to both those cases was made in supporting the later opinions of the court in deciding cases of each class.

The fact is, although the cases have been indiscriminately cited, as above pointed out, the Supreme Court of Illinois has always maintained a clear distinction between the class of cases arising under that

part of the constitutional provisions referring to the taking of property, as to which the Eminent Domain statutes apply, and those arising under the added word "damaged" as to which the Eminent Domain statutes, of which Section 9 is a part, have no application. In the first class of cases, the procedure is a special procedure under the statute under a petition in which the jury views the premises as a matter of right and estimates the damages, and in the second class of cases the action is purely one at law for such damage as has been sustained and cannot be tried until whether there has been damage has been ascertained by awaiting the construction and operation of the improvement and noting its effect upon the market value of the property before the suit may be brought. (See Points IV and V.) And a view is permitted only by consent of the parties.

The substance of the argument made by counsel for plaintiffs in error is that travel facilities, as they please to use the term and which embraces every possible advantage which may come to the community or to abutting property through the construction and maintenance of the defendants' elevated railroads, form in their entirety a single intangible and inestimable advantage to the community, and consequently to the property in the community and that it is impossible for anyone to separate out the advantages flowing from the construction and operation of the elevated railroad in such a manner as to show that certain of those advantages (such as two adjacent stations) have a direct and special effect on certain property.

Counsel start out by defining travel facilities as a basis for their argument and quote excerpts from certain cited cases of the Illinois Supreme Court, in which the term "travel facilities" was used as describing a general or community benefit, which was referred to in those cases, and then announce that the Illinois Supreme Court has stated that "travel facilities" are general benefits. We think that it is apparent to anyone who is familiar with this class of cases, and who will examine the opinions of the Illinois Supreme Court, to which reference is made, that the fact is that the court had one thing in mind when it used the term and counsel have another thing in mind when they use the term.

Travel facilities which mean simply the ability of the individual to get from one place to another more conveniently, or by several routes rather than by one, or to move his produce from a nearer point, or with greater ease to himself, are of the class which were meant in the use of the term by the court, as is apparent from the context.

Whereas, travel facilities which mean the location of stations and depots, the carrying of masses of people where advertising is of value, and increasing the number of people taken by the property either in the vehicles, or through their disbursement from the terminals, are the character of travel facilities which counsel wishes this court to assume was what was in mind of the court.

The fact is that counsel seems to have lost sight of the real distinction between general and special benefits through travel facilities; a general benefit

is a benefit to the people who are afforded the advantages of the transportation offered; and a special benefit is the advantage to particular property which results in an increased market value to that property from the use of the facilities by the people. The former is better called a personal advantage, which, when it is translatable into an actual increased value to property, which can be measured in money, because the property will sell for more by reason of the use of these facilities, is a special benefit to that property. Differently stated, any benefit accruing to property, no matter where located, by reason of the translation of the benefits to the individuals in the community from the improved facilities of travel into a specific added value to such property by reason of the use of those advantages, at once becomes, as the Illinois Supreme Court has said, a special benefit to that property.

We submit that the writ of error should be dismissed or the judgment of the Illinois Supreme Court should be affirmed.

Respectfully submitted.

ADDISON L. GARDNER,
RANDALL W. BURNS,
FRANCIS W. WALKER.

ROGER L. FOOTE,
Of Counsel.

APPENDIX.

Inasmuch as counsel's argument is based on their statement of what the witnesses testified to in regard to the benefits to the plaintiffs in error's property, and it is claimed that this court should find that the witnesses did not separate the general travel facility benefits of the defendants in error's elevated railroad from the special travel facility benefit of the two stations adjacent to plaintiffs in error's property, we feel it essential to call this court's attention specifically to the statements of the witnesses as found in the record on this point, as they definitely refute this claim.

In our opinion this serves to add weight to statements we have made in our brief that counsel for plaintiffs in error's real purpose is to have this court sit as a jury and weigh and determine the evidence. We quote from the testimony of the witnesses, as appears in the printed record, as follows:

Witness Harry V. Wood (Printed Record, page 145):

"*Direct Examination by Mr. Walker.*

"Q. To what, Mr. Wood, do you attribute the increase? A. It was partially from the natural increase of the property. Partially from the advent of the new transportation placed in the street bringing large numbers of people to that locality, which formerly were not easily brought there.

"Q. By what transportation are you speaking of? A. I am speaking particularly of the elevated loop. The benefits came from both

sources, from the natural increase and from this special benefit, as I would call it, at that time, of the elevated railroad which brought people to that point."

Page 154:

"Cross Examination by Mr. Mecartney.

"Q. I will pass that. Now, in considering the effect of this elevated structure, or the building of this elevated structure for railroad purposes, you have spoken about the bringing of public travel on to the street. How do you figure that element in figuring out its market, or effect upon the market value? Would you call that a direct or an indirect effect? A. I would say that was a direct effect upon the value of the property, yes.

"Q. Now, then, what does it come from? A. You could call it indirect. The people went—if the people did not use your property or go up or do anything else, the bringing of the people there is a direct effect in the sense that that is the reason the property is in my judgment benefited, the fact of their having been brought there. In that case, it was a direct effect. It is an indirect effect in the sense that if they are there they will use your property, they will rent your offices and so forth, so I think my old answer will cover that pretty well."

Page 159:

"Q. Well, then, how can you tell the effect upon the market value of this property by increased travel, if you never made any effort to find out how much the increased travel was? A. I think I know about what the increase in value was, what it has been over the entire period of years and I——

"Mr. Mecartney: And——

"The Court: Proceed.

"A. I think I can judge what proportion of that benefit was due to the people carried to the vicinity and what was due to the natural increase by reason of increased population."

Witness Thaddeus H. Howe (Printed Record, page 187):

"*Direct Examination by Mr. Walker.*

"Q. Upon what do you base your opinion, and give me what entered into it that this property was benefited in its market value, the McCoy interest, by reason of the construction and operation of this elevated railroad? A. On account of the increased income owing to the extra traffic that was brought there over the elevated railroad. The possibility of advertising. Those were the main things. I don't think of anything else just at the present time.

"Q. Upon what did you base your opinion that such a possibility exists? A. Income.

"Q. Yes. A. Where the more people are the more business there is, and where the more business is the greater the rents are, and the greater the rents the greater the value of the property. That is the way that I always base values.

"Q. How does the advertising features affect the rental values, the advertising features by this road, in what way, Mr. Howe? A. Well, a man that occupies an office, and his business is——

"Q. What floor are you talking about? A. On the second floor, the second and the third floors are about the only floors that are affected.

"Q. Yes. A. It naturally advertises his business to the people that are going by on the train, just as if those people read the advertisements in the newspapers."

Witness Albert L. Strauss (Printed Record, page 206):

"*Direct Examination by Mr. Walker.*

"Mr. Walker: Mr. Strauss, will you be kind enough to tell me upon what you base your opinion that the construction, maintenance and operation was a benefit to the market value of this property? A. Well, the main cause was the greater number of people it dumped within its confines; also that at this particular spot, within a block either way, there were two stations, making this piece of property more or less a terminal point, and naturally placing in front of the property and contributing to the property a larger number of people than has ever before passed there, and in increasing numbers as years went on, increase in numbers thrown there because the town increased in size due to the loop having gone in there, and there were more of them dumped within the loop than without the loop."

Page 213:

"*Cross Examination by Mr. Mecartney.*

"Q. Give me the estimate of increase in the market value of this property arising from the additional travel furnished to this point or neighborhood or property over what travel would have gone there had it not been for the loop. A. This specific piece of property?

"Q. Yes. A. Thirty-three and one-third per cent immediately and 8 to 10 per cent a year thereafter.

"Q. Now, what is 'immediately'? A. '97 to '98.

"Q. '97 to '98. And you are confining your answer to the particular number of passengers, or I mean to say the particular amount of travel over what would have occurred had it not been for the elevated loop, is that right? A. I am

confining myself to this particular piece of property before and after, and which was necessarily increased in value on account of the increase of travel and being made a terminal, between two terminals."

Witness James P. Whedon (Printed Record, page 226):

"Direct Examination by Mr. Walker.

"Q. Now, what proportion of the increase, if any, do you attribute to the construction, maintenance and operation of this defendant railroad in Van Buren, this loop, taking in the railroads? A. Fully half, if not more.

"Q. Now, Mr. Whedon, upon what do you base your opinion, give me everything that you took into consideration, that the increase from 1895 up till 1905 was a continual increase, half of the percentage of which in your opinion was due to the road? Upon what do you base that opinion? A. I base my opinion upon the fact that the elevated railroad brought to those various stations adjacent to this property a great many people that were not there before. I also base my opinion for the continuation of the effect from the fact that the elevated railroads ran out into the outlying districts, and have continued to run out there, and that the people, the incoming population, have to a very large extent settled along the line of the roads, and therefore these roads have continually brought those people here."

Page 232:

"Cross Examination by Mr. Mecartney.

"Mr. Mecartney: You say that the construction of an elevated railroad along property increases its market value, do you not? A. It depends entirely upon the close proximity of the stations, so that the people can reach the property conveniently."

Witness Bertram M. Winston (Printed Record, page 236):

"Q. Mr. Winston, when you spoke of the elevated loop benefiting this property, what element did you consider in it? A. I considered the trains that went around the loop on Van Buren street, Wabash avenue, Fifth avenue, and Lake street, that carried the passengers and deposited them at the different stations, and brought them to a certain place.

"Q. Is that all the element you considered in ascertaining the effect, the market effect on this property? A. No, there are other conditions. Other conditions of the growth of Chicago, the other competition lines that pass there, the improvement in transportation facilities. My great increase was caused principally by the loop depositing passengers, the loop trains depositing their passengers at the different stations."

Witness Jacob L. Kesner (Printed Record, page 248):

"*Direct Examination by Mr. Walker.*

"Q. Now, Mr. Kesner, will you be kind enough to tell me upon what you base your opinion of the benefit of this elevated railroad, what factors entered into it, and upon what, in your opinion, transactions, what transactions if any you based your opinion on as to the effect of this railroad being beneficial to the market value of this property? A. Well, the concentration of people at different stations around the loop. My own experience has been that I have——"

Page 252:

"*Cross Examination by Mr. Mecartney.*

"Q. What particular advantage do you think the loop had to bring travel to the south side

over what the railroad had before, those existing railroads which had what we call sub-terminals on the south side or in the central district, I mean, referring to the south side, the central district? A. Brought the people nearer to where they wanted to go.

"Q. Couldn't the people go where they wanted to go without the loop? A. By walking, yes. They do not prefer to do that, as a rule.

"Q. What estimate do you place on this element of increased travel, which the loop brought to this particular porperty? How much, in dollars and cents, at the time the road was completed and put in operation? A. Do you mean the McCoy property?

"Q. The McCoy property, yes. A. Between what dates, between 1895 and 1905?

Q. I mean after in October, 1907 (1897), how much of the market value of that property was attributable—how much was it increased in value, if you say it was increased, by the people brought there alone, the additional people which you say the loop brought to that property? A. It was worth $3,500 a front foot on Clark street at that time and I would say a five per cent gradual increase, which would mean say $175; about half of that would be attributed to the people landed there from the loop as it is in between two stations."

McCOY ET AL., EXECUTORS OF McCOY, v. UNION ELEVATED RAILROAD COMPANY ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

No. 180. Argued March 14, 15, 1918.—Decided June 3, 1918.

The contract clause relates to legislative, not to judicial, action impairing obligation of contracts.

In an action for damages to abutting property due to construction, maintenance and operation of an elevated railroad, in a street of which the fee was in the public, the state court held that recovery depended upon the effect on market value, in determining which increase of such value arising from increase of travel should be considered and treated as a special benefit, though enjoyed also by other neighboring property. *Held*, that there was no basis for invoking the equal protection clause, and that the ruling did not deprive of property without due process of law.

Where private property is taken for public purposes, the fundamental right guaranteed by the Fourteenth Amendment is that the owner shall not be deprived of the market value under a rule of law which makes it impossible for him to obtain just compensation. There is no guarantee that the rule adopted by the State shall be the one best supported by reason or authority, or against mere errors in the course of the trial.

It is almost universally held that, in arriving at the amount of damages to property not taken, allowance should be made for peculiar and individual benefits conferred upon it, and it cannot be said that extension of the rule to include increase of market value resulting directly from the public improvement where all property in the neighborhood is similarly benefited deprives of the fundamental right protected by the Amendment.

271 Illinois, 469, affirmed.

THE case is stated in the opinion.

Mr. Harry S. Mecartney, with whom *Mr. John S. Miller* was on the briefs, for plaintiffs in error.

Mr. Francis W. Walker and *Mr. Roger L. Poole*, with whom *Mr. Addison L. Gardner* and *Mr. Randall W. Burns* were on the brief, for defendants in error.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

William A. McCoy, testator of plaintiffs in error, owned a hotel situated at the northwest corner of Clark and Van Buren Streets, Chicago. During 1897 defendants constructed along the latter street and in front of the building an elevated passenger railroad of the ordinary type and have continued to maintain and operate it. Charging that construction, maintenance and operation of the railroad had caused and would continue to cause injury to the property by noise, smoke, dirt, shutting off air and light, disturbing privacy and impairing the freedom of ingress and egress and that its market value had been greatly reduced, McCoy brought a common law action (September, 1902) in a state court to recover the entire damage.

The declaration does not allege plaintiff's ownership of the fee in the street, but asserts his interest in the lot and his right to the "easements and privileges which legally appertain and rightfully belong to property abutting public streets" in Chicago, including the right of light, air, access, privacy, view, etc. Trial to a jury upon plea of not guilty, during February, 1904, resulted in verdict for defendants and judgment thereon was affirmed by the Supreme Court, a writ of error having been sued out by McCoy's executors. 221 Illinois, 498. That court's statement of facts follows:

"During the years 1895 and 1897 what is generally known as the 'Loop' was constructed, under authority conferred by ordinances of the city of Chicago, for the joint use of the three systems above mentioned and au-

other elevated system then in course of construction. The loop consists of an elevated structure in the streets encircling the central portion of the business district of the city, upon which are laid tracks for the passage of the elevated trains of all of the defendant companies completely around the central portion of the business district. Before the construction of the loop the elevated trains of the defendant companies stopped at their respective terminals. The structure forming the south side of the loop was placed in that portion of Van Buren street extending from Wabash avenue on the east to Fifth avenue on the west, Clark street being one of the streets intersecting Van Buren street between these two avenues. Stations to permit passengers to board and leave the elevated trains were established at intervals around the loop and stairways were constructed leading from each station to the surface of the street. One of these stations in Van Buren street was established at La Salle street, about one hundred feet west from the McCoy Hotel, and another was established at Dearborn street, about three hundred feet east from the hotel. The elevated structure in Van Buren street obstructed the passage of light to the store rooms in McCoy's building, and the noise from the passage of trains over the structure and the fact that passing trains were on a level with the windows of the second floor of the building rendered the rooms on the south side of the second and third floors of the building less desirable for hotel purposes. Large upright columns supporting the elevated structure were placed just inside the curb in front of the premises and rendered the premises less accessible from the street.

"There is no material controversy over the facts in the case. The witnesses all agree that the matters above mentioned, when considered by themselves, would be detrimental to the premises. They also agree that there was a steady increase of from five to ten per cent. per year

in the value of the premises from the construction of the loop until 1905. It also appears from the evidence that the rents from the store rooms on the ground floor constantly increased after 1897. The plaintiff called but one real estate expert as a witness. He testified that the damages to the property from the construction of the elevated structure, and the operation of the trains thereon, amounted to $31,000, being fifteen per cent. of the value which the witness placed upon the interest of McCoy in the premises. He admitted that there had been a continuous increase in the value of the premises since the completion of the loop, and that a portion of that increase, which he said it was impossible to estimate, was due to the increased travel brought to the premises by the elevated railroad, but that he did not take that into consideration in fixing the damages. The real estate experts called by the defendants, on the other hand, testified that at least one-half of the increase in the value of the premises was due to the increased travel in front of the premises resulting from the operation of the elevated railroad in Van Buren street as a part of the loop. In support of the testimony of these witnesses defendants proved that the number of persons boarding the elevated trains at the La Salle street station, in Van Buren street, during the three months of the year 1897 in which trains were operated around the loop, was 161,761, and that the number constantly increased until in 1905 there was 3,559,583 persons who boarded the trains at that station. It was also shown that during the period in 1897 above mentioned 194,304 persons boarded the elevated trains at the Dearborn street station, in Van Buren street, and that the number constantly increased each year until in 1905 there were 2,558,976 persons who boarded the trains at that station."

During the trial, over plaintiff's objections, questions concerning evidence were determined in accordance with

repeated rulings by the Illinois Supreme Court that the effect of construction, maintenance and operation of an elevated road upon market value was the point for determination; and that increase in such value caused by the improvement itself should be considered and treated as a special benefit, although enjoyed by other neighborhood property.

Among others, plaintiff requested the following instructions:

"The jury are instructed that the constitution of this state provides that 'private property shall not be taken or damaged for public use without just compensation.' This action is brought by plaintiff for an alleged damage to the property of plaintiff arising from the construction [maintenance and operation] of the structure in the abutting street for elevated railroad purposes. Such damages in the eye of the law can only be a loss in the market value of the property arising from the said construction, [maintenance and operation] for the purposes aforesaid. Whether the premises in question have in fact been so damaged is for the jury to find from the evidence, according to the method and within the limitations of other instructions given you.

"The court instructs the jury that 'benefits' and 'damages' spoken of in the instruction mean benefits and damages to the market value thereof, and that by the term 'market value' of property, as used in these instructions, is meant... the price at which the owner if desirous of selling, would under ordinary circumstances surrounding the sales of property have sold the property for, and what a person desirous as purchaser would have paid for it under the same circumstances."

"The jury are instructed that in considering the question of whether the premises in question were or were not damaged by the construction of the structure in the abutting street for elevated railroad purposes,

they are to exclude from consideration all benefit which accrued to the said premises or to the owners thereof by reason of improved travel facilities furnished by said elevated railroad."

The words "maintenance and operation" were inserted in the first of these requests and as thus amended it was given; the others were refused.

The following instructions were also given:

"The court instructs the jury that benefits and damages spoken of in these instructions mean benefits and damages to the fair cash market value thereof and that by the term fair cash market value of the property as used in these instructions is meant its value as determined by what it would sell for in the market for cash in the due course of business. This does not mean the price at which it would sell under special circumstances, but its value as sold in the market under ordinary circumstances for cash, and not on time, and assuming that the owner is willing and not compelled to sell and the purchaser is willing and under no compulsion to purchase."

"The jury is instructed that if you believe from the evidence that plaintiff's premises have been increased in their fair, cash, market value by the construction, maintenance and operation of defendants' said railroad, and if you also believe from the evidence that other property in the neighborhood of the plaintiff's premises not abutting upon the defendants' railroad have been likewise increased in their fair, cash, market value by the construction, maintenance and operation of said railroad, but to a greater extent than the plaintiff's said premises, you have no right from that fact to find that the plaintiff's premises have been damaged.

"Special benefits are such benefits as are special or peculiar to a particular piece of property, and which beneficially affect its fair, cash, market value, as distinguished from those benefits which are common to the

public at large, and which are termed general benefits; and you are instructed that in determining the effect of the construction, maintenance and operation of defendants' elevated railroad upon the fair, cash, market value of plaintiff's said premises, you are not to take into consideration any general benefits which you may believe from the evidence to have arisen out of the construction, maintenance and operation of said elevated railroad, but you should take into consideration special benefits, if any, shown by the evidence, to plaintiff's said premises from the construction, maintenance and operation of defendants' said elevated railroad.

"The jury is instructed that if you believe from the evidence that the property of the plaintiff described in the declaration of this case was enhanced in its fair, cash, market value by reason of the construction, maintenance and operation of the elevated railroad of the defendants, such increase in market value is a special benefit to the property of the plaintiff and not a general benefit, notwithstanding you may believe from the evidence that the other property in the vicinity of plaintiff's property also was enhanced in fair, cash, market value to a greater or less degree by reason of the construction, maintenance and operation of defendants' said elevated railroad."

"The jury is instructed that the measure of damages in a case of this kind is the difference between the fair, cash, market value of the premises with the elevated railroad constructed, maintained and operated in the street in front of it, and what the fair, cash, market value of said premises would have been had not said elevated railroad been so constructed, maintained and operated. If you believe from the evidence that the fair, cash, market value of the plaintiff's premises with the railroad constructed, maintained and operated in Van Buren street has not been diminished below what you believe

that the evidence the fair, cash, market value of said premises would have been if the said elevated railroad had not been constructed, maintained and operated in said street, then said plaintiff's premises have not been damaged by the construction, maintenance and operation of defendants' elevated railroad."

The Supreme Court said:

"The contention made by plaintiffs in error upon which most of the assignments of error depend is, that the benefits to the premises by reason of the increased travel in front of the premises resulting from the operation of the elevated railroad in Van Buren street as a part of the loop cannot be considered in determining whether the premises have been damaged by the construction of the elevated structure and the operation of trains thereon, first, because such benefits are general benefits, common to all the property in the vicinity; and second, because such benefits are conjectural and speculative. The same contention was made in *Brand* v. *Union Elevated Railroad Co.*, 236 Ill. 132, *Gosheyan* v. *Union Elevated Railroad Co.*, 253 *id.* 352, and *Gosheyan* v. *Union Elevated Railroad Co.*, 266 *id.* 432, and in each of those cases we held that such benefits should be considered in determining whether premises abutting on a public street have been damaged by the construction and operation of an elevated railroad in such street. The reasons for such holding were fully set forth in the opinions filed in the cases above mentioned and it would serve no useful purpose to repeat them here. It is sufficient to say that we adhere to the views expressed in the former cases involving the same question as to have presented. . . . Complaint is made of the action of the court in giving certain instructions on behalf of defendants in error and in refusing or modifying certain instructions submitted by complainant. . . . Moreover, the evidence in this case would not have sustained a verdict in favor of the plain-

tiff, and any error committed by the trial court in giving, refusing or modifying instructions was therefore harmless."

In their brief here counsel for plaintiffs in error declare:

"Plaintiff presented his case, therefore, upon the basis that his damage was to be estimated:

"(1) By taking the market value of the premises immediately before the advent of the Loop; then

"(2) To consider how the structure in question placed in the block upon which his premises abutted (which defined the 'physical' scope of his property or rights)—*forever dedicated to railroad uses and to be operated therefor*, would actually interfere with the *actual use and enjoyment* of the premises; and then

"(3) To estimate to what extent such structure put or dedicated to such use, would reduce that market value. That is, to *capitalize* the permanent *interference*, i. e., damage. (As laid down in Lewis, 2d Ed., § 693.)

"In the trial court the main conflict was waged over the question as to whether or not the court should admit on behalf of defendants evidence of 'general' or 'travel' benefits occurring from the establishment of the Loop in its *entirety*, or whether the evidence should be held down to the issue of 'direct, proximate and physical effect.' Said court, following the late ruling of the Illinois Supreme Court in *Brand* v. *Union Elev. R. R. Co.*, 268 Ill. 123 (a review of which was asked in this court in 238 U. S. 596, same title), tried the case upon the basis of allowing this special damage to be offset or reduced by, or considered in connection with the estimated amount of market benefit that accrued to the premises from 'travel benefits.'"

And they now maintain that the judgment below is erroneous because it (1) impairs the contract which their testator made when he purchased the property contrary to § 10, Article I, Federal Constitution, (2) denies to them

the equal protection of the laws and (3) deprives them of property without due process of law in violation of the Fourteenth Amendment. The first claim is clearly untenable; the contract clause prohibits legislative not judicial action. *Ross* v. *Oregon*, 227 U. S. 150, 161, 164; *Moore-Mansfield Co.* v. *Electrical Co.*, 234 U. S. 619, 623, 624; *Frank* v. *Mangum*, 237 U. S. 309, 344. Nothing in the record affords support for the second claim. The third demands consideration.

We may examine proceedings in state courts for appropriation of private property to public purposes so far as to inquire whether a rule of law was adopted in absolute disregard of the owner's right to just compensation. If the necessary result was to deprive him of property without such compensation then due process of law was denied him, contrary to Fourteenth Amendment. *Chicago, Burlington & Quincy R. R. Co.* v. *Chicago*, 166 U. S. 226, 246; *Backus* v. *Fort Street Union Depot Co.*, 169 U. S. 557, 565; *Fayerweather* v. *Ritch*, 195 U. S. 276, 298. Our concern is not to ascertain whether the rule adopted by the State is the one best supported by reason or authority nor with mere errors in course of trial but with denial of a fundamental right. *Appleby* v. *Buffalo*, 221 U. S. 524, 532. And see *McGovern* v. *New York*, 229 U. S. 363, 371. And here it must be noted that the claim is for damages to property not actually taken from the owner's dominion.

The Illinois constitution provides: "private property shall not be taken or damaged for public use without just compensation." In *Peoria, Bloomington & Champaign Traction Co.* v. *Vance*, 225 Illinois, 270, 272, where the owner sought damages to the balance of his farm resulting from taking a right-of-way for an electric road, the court pointed out the applicable doctrine long established in the State. It said:

"Since the adoption of the constitution of 1870 it has

been uniformly held by this court, in such cases as this, that the measure of damages to land not taken is 'the difference in the fair cash market value of the land before and after the construction of the railroad,' or 'the amount, if any, which lands not taken will be depreciated in their fair cash market value by the construction and operation of the proposed road.' . . . . Under the rule adopted in this State for determining whether, or in what amount, property not taken will be damaged by the construction and operation of a railroad, any benefits which are not conjectural or speculative, and which actually enhance the market value of such property, are to be considered as special benefits and not as general benefits, within the meaning of the rule that general benefits cannot be considered in determining whether, or in what amount, property not taken will be damaged. Special benefits do not become general benefits because the benefits are common to other property in the vicinity. The fact that other property in the vicinity of the proposed railroad will also be increased in value by reason of the construction and operation thereof furnishes no excuse for excluding the consideration of special benefits to the particular property in determining whether it has been damaged, and if it has, the extent of the depreciation in value."

This doctrine was again expressly affirmed in *Brand* v. *Union Elevated R. R. Co.*, 258 Illinois, 133—a proceeding like the present one to recover damages caused by constructing, maintaining and operating an elevated railroad along the street. The trial court below accepted and applied the approved rule and we are now asked to declare that it absolutely disregards the owner's fundamental right to just compensation—that it necessarily deprives him of such compensation.

How far benefits must be considered in determining damages to property when claimed on account of a public improvement is a vexed question which has given occasion

for numberless decisions in different States, as well as much legislation. The matter is elaborately treated and the cases collected in Lewis on Eminent Domain and Nichols on Eminent Domain. In the former, § 687, 3d ed., it is said: "The decisions may be divided into five classes, according as they maintain one or the other of the following propositions: First. Benefits cannot be considered at all. Second. Special benefits may be set off against damages to the remainder, but not against the value of the part taken. Third. Benefits, whether general or special, may be set off as in the last proposition. Fourth. Special benefits may be set off against both damages to the remainder or the value of the part taken. Fifth. Both general and special benefits may be set off as in the last proposition." The latter work at § 256, 2d ed., says: "It is universally recognized that when there is no taking the damages to a tract of land from the construction of a public work cannot be correctly ascertained without determining whether the tract has been depreciated in value, and to determine this all the effects of the public work, beneficial or injurious, must be considered. Strictly speaking, it is said, it is not a question of benefits at all, except that proof of benefits might be one way of showing that there had been no injury. The real question is, had the property in question been decreased in market value by the construction of the public improvement, and the amount of damage is the decrease in such value. In most States however it is only special benefits that can be set off; but in the States which allow the set-off of general benefits to remaining land when part of a tract is taken, the same latitude is given in awarding damages when no land is taken."

The fundamental right guaranteed by the Fourteenth Amendment is that the owner shall not be deprived of the market value of his property under a rule of law which makes it impossible for him to obtain just compensation.

There is no guarantee that he shall derive a positive pecuniary advantage from a public work whenever a neighbor does. It is almost universally held that in arriving at the amount of damage to property not taken allowance should be made for peculiar and individual benefits conferred upon it—compensation to the owner in that form is permissible. And we are unable to say that he suffers deprivation of any fundamental right when a State goes one step further and permits consideration of actual benefits—enhancement in market value—flowing directly from a public work, although all in the neighborhood receive like advantages. In such case the owner really loses nothing which he had before; and it may be said with reason, there has been no real injury.

This subject was much discussed in *Bauman* v. *Ross*, 167 U. S. 548, 574, 584. Through Mr. Justice Gray we there said: "The just compensation required by the Constitution to be made to the owner is to be measured by the loss caused to him by the appropriation. He is entitled to receive the value of what he has been deprived of, and no more. To award him less would be unjust to him; to award him more would be unjust to the public. Consequently, when part only of a parcel of land is taken for a highway, the value of that part is not the sole measure of the compensation or damages to be paid to the owner; but the incidental injury or benefit to the part not taken is also to be considered. When the part not taken is left in such shape or condition, as to be in itself of less value than before, the owner is entitled to additional damages on that account. When, on the other hand, the part which he retains is specially and directly increased in value by the public improvement, the damages to the whole parcel by the appropriation of part of it are lessened. . . . The Constitution of the United States contains no express prohibition against considering benefits in estimating the just compensation to be paid for pri-

vate property taken for public use; and, for the reasons and upon the authorities above stated, no such prohibition can be implied; and it is therefore within the authority of Congress, in the exercise of the right of eminent domain, to direct that, when part of a parcel of land is appropriated to the public use for a highway in the District of Columbia, the tribunal vested by law with the duty of assessing the compensation or damages due to the owner, whether for the value of the part taken, or for any injury to the rest, shall take into consideration, by way of lessening the whole or either part of the sum due him, any special and direct benefits, capable of present estimate and reasonable computation, caused by the establishment of the highway to the part not taken." See *Martin* v. *District of Columbia*, 205 U. S. 135.

The judgment below is

Affirmed.